Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

LORI ANN PARR,

Petitioner,

v.

MIDDLE TENNESSEE STATE UNIVERSITY; DONALD CURRY; J.MAIER, Dr.; MICHAEL A. GIBSON; JAMES WALKER, President; C. NATHAN ADAMS,
In their official and individual capacities.

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Lori Ann Parr
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26 pp

QUESTIONS PRESENTED

1. Does Congress have the constitutional authority to require states to pay money damages for violations of Title II of the Americans With Disabilities Act of 1990, 42 U.S.C. 12101 et seq. (ADA) at State universities, and therefore did the Sixth Circuit err in affirming the judgment of the District Court dismissing the petitioner's claims for lack of subject matter jurisdiction under Title II of the ADA?

2. Does Congress have the constitutional authority to require states to pay money damages for violations of the Rehabilitation Act of 1973 (29 U.S.C. 790 et seq.) §504, et seq., as amended, (Rehabilitation Act) at State universities, and therefore did the Sixth Circuit err in affirming the judgment of the District Court dismissing the petitioner's claims for lack of subject matter jurisdiction under the Rehabilitation Act?

3. Does the severability clause of Title IV of the ADA (§ 12213) allow the remaining legal protections and legal remedies of the ADA for discrimination and retaliation of disabled students at State universities to remain enforceable if the accommodations provisions of the ADA are found to be unconstitutional, and therefore did the Sixth Circuit err in affirming the judgment of the District Court dismissing petitioner's claims for lack of subject matter jurisdiction under the ADA?

4. Did the Sixth Circuit err in concluding that all of the Petitioner's claims are violations of equal protection discrimination principles, and therefore did the Sixth Circuit err in affirming the judgment of the District Court dismissing the petitioner's claims for lack of subject matter jurisdiction?

5. Did the Sixth Circuit err in affirming the judgment of the District Court dismissing the petitioner's claims for lack of subject matter jurisdiction, when the petitioner raised claims against the Respondents in their individual capacities under 42 U.S.C. §1983?

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Appendix:

A. Opinion of the United States Court of Appeals for the Sixth Circuit, filed May 13, 2003, No. 02-5925

B. Order of the United States District Court For the Middle District of Tennessee, Nashville Division, filed June 18, 2001, No. 3-98-0865

C. Pertinent Text of Constitutional and Statutory Citations

Notice: Pursuant to Supreme Court Rule 29 (4)(b), notice is given that 28 U.S.C. § 2403(a) may apply to this filing.

PETITION FOR WRIT OF CERTIORARI

Lori Ann Parr respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case.

CITATIONS TO OPINIONS BELOW

The opinion of the United States District Court for the Middle District at Nashville, Tennessee, *Lori Ann Parr v. M.T.S.U., et al.*, No.: 3:98-0865, (Middle District, June 18, 2001) is unpublished. The opinion of the United States Court of Appeals for the Sixth Circuit, *Lori Ann Parr v. M.T.S.U., et al,* Record No. 02-5925 (Sixth Circuit, May 13, 2003) is unpublished (App. A).

JURISDICTION

The judgment of the United States Court of Appeals for the Sixth Circuit was entered on May 13, 2003. This Court has jurisdiction pursuant to 28 U.S.C. § 1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Americans With Disabilities Act of 1990, Title II & Title IV, 42 U.S.C. 12101, Title II, Part A, §'s 12131 to 12134, Title IV, §'s 12201 to 12213 (ADA)

Rehabilitation Act of 1973, § 504, as amended through 1998; 42 U.S.C. 2000d-7 (Rehabilitation Act)

42 U.S.C., § 1983

TABLE OF AUTHORITIES CITED

Board of Trustees of the University of Alabama, et. al. v. Garrett, et al. 531 U.S.356, 121 S.Ct. 955 (2001).....6,8
Board of Regents v. Roth, 408 U.S. 573, 92 S.Ct. 2707 (1972).....9
Harlow v. Fitzgerald, 457 U.S. 800, 818, 102 S.Ct. 2727, 2738 (1982).....10
Kendall v. Board of ED. Of Memphis City, 627 F.2d 1 (1980).....9
Plyler v. Doe, 457 U.S. 221; 235; 233 (1981).....6,7,8
Popovich v. Cuyahoga County Court of Commons Pleas, 227 F.3d 627, 639-640 (6th Cir. 2000).....3
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Russello v. United States, 464 U.S. 16, 23 (1983).....8
*Stemler v. City of Florence*126 F.3d 866 (1997).....9

STATEMENT OF THE CASE

On September 18, 1998, Petitioner filed her original Complaint in this action in the United States District Court for the Middle District of Tennessee, *pro se*.[1] On October 19, 1998, the State of Tennessee moved to dismiss the case in

[1] Petitioner petitioned the District Court for appointment of counsel, but the motion was denied. Plaintiff had hesitated, on and off, filing any action against MTSU, et al. in federal court fearing further retaliation and/or physical assaults from MTSU, et al. Upon the last statute about to expire in the matter, Petitioner – who was familiar with court procedure/process from her Criminal Justice Administration program– filed the initial Complaint, pro se, to seek relief, and to seek protection with the District Court, fully intending to acquire counsel immediately thereafter; however, approximately one month after Petitioner filed her Complaint, MTSU, et al. moved to dismiss the case upon the issue of sovereign immunity. Because of the complexity of the Eleventh Amendment issues, the case now being an appellate matter, and the division and uncertainty of

its entirety concerning Middle Tennessee State University (MTSU), asserting that Congress was not acting under a valid exercise of power in abrogating the States' Eleventh Amendment sovereign immunity under the ADA. MTSU is a state university that receives federal funding. The District Court denied MTSU's Motion to Dismiss for lack of subject matter jurisdiction by Order on November 20, 1998. On Dec.4, 1998, Respondent MTSU filed an interlocutory appeal docketed in the Sixth Circuit as Case No. 98-6701, and on Sept. 16, 1999, Respondents Curry, Maier, Gibson, and Walker filed an interlocutory appeal docketed in the Sixth Circuit as Case No. 99-6296. Petitioner was given leave by the District Court to Amend her Complaint to include, among other issues, to identify more specifically a cause of action under the Rehabilitation Act, and to join a separate cause of action filed in the U.S. District Court, 3:00-398 against Respondents MTSU and Dr. C. Nathan Adams (Adams) concerning discriminatory and retaliatory acts and due process violations Petitioner alleged were committed against her by MTSU, et al. while her original case (3:98-0865) was pending in District Court. Petitioner's Amended Complaint **(hereinafter "Complaint")** petitioned the Court for "declaratory relief, injunction, and damages to redress the deprivation of rights reserved to Petitioner under the Americans With Disabilities Act; U.S.C. 42, Chapter 126, Section 12101 to 12213; U.S.C. 42, Chapter 21, Section 1981 to 2000h-6; and under the Rehabilitation Act of 1973, and its Section 504, and any and all other applicable federal and/or

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application of U.S. Circuit Court and U.S. Supreme Court rulings concerning matters of disability making such cases somewhat undesirable, prospective attorneys the plaintiff approached required of the plaintiff approx. $5,000 as retainer (part to cover costs of discovery) in contingent arrangements, of which Petitioner could not afford. Consequently, Petitioner has had to continue on in pro se capacity during these last several years as these matters concerning the ADA have been pending and deliberated before the Sixth Circuit Court, its sister circuit courts, and the U.S. Supreme Court, Petitioner's pro se status being the only option remaining to her to allow her case to survive the disability law deliberations in the appellate courts.

constitutional law," among other requests. On June 15, 2001, the District Court issued a *sua sponte* ruling dismissing Petitioner's action on the basis of the ruling of the en banc hearing in the *Popovich v. Cuyahoga County Court of Commons Pleas*, 227 F.3d 627, 639-640 (6th Cir. 2000). On June 25, 2001, Petitioner filed a Motion To Amend and/or Alter, and a subsequent Motion To Amend Petitioner's Motion To Amend and/or Alter on July 24, 2001. On June 17, 2002, Orders were entered denying Petitioner's Motions based upon the rehearing of the *Popovich* en banc hearing. On July 12, 2002, Petitioner filed a Notice of Appeal with the Sixth Circuit Court of Appeals. On May 13, 2003, the Sixth Circuit affirmed the judgment of the District Court.

STATEMENT OF THE FACTS

Petitioner entered the graduate program for the Accounting and Computer Information Systems (ACIS) master's degree at MTSU in fall of 1993.[2] Petitioner was a documented disabled student and was offered accommodations by MTSU for two disabilities, 1) carpal/cubital tunnel syndrome, and 2) conversion disorder. In 1994, in violation of MTSU policy, Dr. Clark (Clark) denied Petitioner an accommodation that had been granted Petitioner by MTSU. Petitioner filed a complaint with MTSU's disability office with copy to Respondent President Walker (Walker). After filing the complaint, Petitioner began to experience repeated discriminatory and retaliatory acts and omissions of acts from Respondents that continued on for years, that included, but were not limited to, acts and omissions of acts that violated Petitioner's due process rights and equal protection rights. The eventual outcome of the

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[2] Petitioner began a Master's of Criminal Justice graduate program in 1997 after it became clear the respondents were going to block petitioner's completion of her master's degree in ACIS. Petitioner graduated with her Master's of Criminal Justice (M.C.J.) degree on May 10, 2003.

Respondents' acts and omissions of acts caused Petitioner to lose her master's degree in ACIS from the expiration of the matriculation period to complete the master's degree; caused Petitioner to lose the future monetary and other future benefits Petitioner would have received from the master's degree[3]; wasted thousands of hours[4] Petitioner had invested in her time attending pre-requisite/requisite classes, and studying, for the ACIS masters; caused Petitioner to lose all of the expected return on her investment in the ACIS master's degree from the substantial, non-dischargeable student loans[5] Petitioner borrowed for educational expenses and to support herself and her two teenage sons while making this significant investment in a high-paying career after a work-injury forced Petitioner to change careers; caused Petitioner to be held financially liable for such non-dischargeable student loans plus compounding interest, for the remainder of her life[6], and harmed Petitioner's professional reputation, among other damages noted in Petitioner's Complaint. Additionally, Petitioner had to begin

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[3] Upon completion of re-taking QM 677 in Spring of 1999 while Petitioner's instant case was pending in the U.S. District Court, Petitioner intended to show at trial she had completed all requirements for the ACIS master's degree.

[4] Petitioner spent on average 25-40 hours per week for approximately 3 years working on the pre-requisite and requisite classes for the master's degree in ACIS, year-round [Approx.: Fall – Aug. 27 to Dec. 17; Spring – Jan. 12 to May 10; Summer – June 3 to Aug. 5. In-school for on average 40 weeks per year, Petitioner expended conservatively 1000 hours per year on the pre-requisites/requisites for the degree, or, conservatively, 3000 total hours for three years.

[5] Petitioner stated in her letter to Curry that the approximate amount borrowed was approx. $35,000; Petitioner has determined that the actual amount is higher, but since the actual amount was not entered into evidence in the Record, Petitioner will proceed in argument as if the amount were $35,000, at interest rates ranging 7 ½ to 8 ½ percent per year.

[6] The government's student loan program offers an income contingent plan as an alternative to bankruptcy/non-dischargeability that allows forgiveness of the loans after 25 years; however, the income contingent plan can have serious consequences for student loan debtors, including contributing to the breakup of marriage and family, increasing the number of single parent families, and causing the seizure of assets of the elderly for tax payment of debt forgiven, as described in petioner's Brief to the Sixth Circuit, 02-5925.

work on a replacement master's degree, causing Petitioner and her sons to further suffer financially for many years. Further, Petitioner's medical condition (conversion disorder) was severely aggravated by the stress of these events.

JURISDICTIONAL STATEMENT

The basis for federal jurisdiction for the U. S. District Court, Middle District, Tennessee was invoked pursuant to U.S.C. 28 at 1331. The basis for federal jurisdiction in the U.S. Sixth Circuit Court of Appeals was invoked pursuant to Federal Rules of Civil Procedure Rule 4(a)(1).

REASONS FOR GRANTING WRIT

The ADA, 42 U.S.C. 12101 et seq., established a "comprehensive national mandate for the elimination of discrimination against individuals with disabilities" because Congress found that "historically, society has tended to isolate and segregate individuals with disabilities," wherein "such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem." 42 U.S.C. 12101(b)(1); 12101(a)(2). Congress found that discrimination against persons with disabilities "persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services." 42 U.S.C. 12101(a)(3); 42 U.S.C. 12101(a)(7). In response to its determinations, Congress "invoke[d] the sweep of congressional authority, including the power to enforce the fourteenth amendment" as authority for its passage of the ADA. 42 U.S.C. 12101(b)(4), including Title II, 42 U.S.C. §'s 12131-12165, to address discrimination by governmental entities in the operation of public services, programs, and

activities, including transportation; and Title IV, 42 U.S.C. §'s 12201 to 12213, with § 12213's severability clause indicating Congress' desire to allow remaining provisions of the ADA to remain intact should any provisions of the ADA be found to be unconstitutional. The term "disability" as defined by Congress is "a physical or mental impairment that substantially limits one or more of the major life activities of [an] individual" which includes "a record of such an impairment" and/or "being regarded as having such an impairment." 42 U.S.C. 12102(2).

Question 1 & Question 2:[7]

In *Board of Trustees of the University of Alabama, et. al. v. Garrett, et al.* (2001) the Court noted Title II of the ADA "has somewhat different remedial provisions from Title I," and in reference to Justice Breyer's Appendix C "The overwhelming majority of these accounts pertain to alleged discrimination by the States in the provision of public services and public accommodations, which areas are addressed in Titles II and III of the ADA" (*Board of Trustees of the University of Alabama, et. al. v. Garrett, et al.* 531 U.S.356, 121 S.Ct. 955, 2001, footnotes 1 & 7, *slip opinion*). In *Garrett*, the Court declined to decide the constitutional issue of whether Title II is appropriate legislation under §5 of the Fourteenth Amendment.

In *Plyler v. Doe* (1981) the Court noted "American people have always regarded education and [the] acquisition of knowledge as matters of supreme importance" and "...when the State provides an education to some and denies it to others, it immediately and inevitably creates class distinctions of a type fundamentally inconsistent with those purposes...of the Equal Protection Clause," and although the Court noted "...it is undeniable that education is not a "fundamental right" in the sense that it is constitutionally

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[7] Since petitioner's Question 1 & Question 2 involve similar issues – considering the ADA incorporates substantial portions of the Rehabilitation Act - the petitioner addresses both questions with the same presentation in petitioner's writ of certiorari.

guaranteed" the Court also noted "..*Rodriguez* implicitly acknowledged that certain interests, though not constitutionally guaranteed, must be accorded a special place in equal protection analysis" (Blackmun, concurring) (*Plyler v. Doe,* 457 U.S. 221; 235; 233).

Accommodations

In the enactment of prior legislation by Congress to bestow equal rights upon those suspect or quasi-suspect groups deemed oppressed in America – such as for race, religion, nationality, or gender – *de facto* accommodations were created as a by-product of such legislations. Nationwide busing was instituted at great social costs and social upheaval to the States in the Nation in order to accommodate equal access of the African-American race to better schools for better education. Racial quotas and mandates exist to accommodate equal access of minorities to higher education. Bilingual and multi-lingual court reporters, interpreters, and other multi-lingual specialists are employed in public services across the Nation to accommodate those who cannot speak or understand the English language.

Just as "*de facto* segregation is as real as segregation imposed by law,"[8] *de facto* accommodations are as real as accommodations imposed by law. If creation of accommodations – either *de facto* or by law – is beyond the reach of Congress' § 5 power, then Congress' powers to remedy purposed inequality under the Fourteenth Amendment - whether for race, national origin, gender, disability, or other - are rendered meaningless in their ability to remedy inequality.

Question 3:

Congress explicitly stated in Title IV (§ 12213) of the ADA "Should any provision in this chapter be found to be unconstitutional by a court of law, such provision shall be severed from the remainder of this chapter and such action

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[8] Source: WorldNet®1.6, © 1997, Princeton University, http://www.dictionary.references.com/search?q=de+facto. Accessed: 08-03-03.

shall not affect the enforceability of the remaining provisions of this chapter." As stated by the Court in *Board of Trustees of the University of Alabama, et. al. v. Garrett, et al.*, [W]here Congress includes particular language in one section of a statute...it is generally presumed that Congress acts intentionally and purposely in the ..inclusion" citing *Russello v. United States*, 464 U.S. 16, 23 (1983). Therefore, if the accommodations provisions of the ADA are found to be unconstitutional by the Court, all remaining provisions of the ADA concerning discrimination and retaliation against disabled students in State universities, and private remedies for such, should remain enforceable, according to §12213.

Question 4:

The Sixth Circuit stated in its Order dismissing Petitioner's claims for lack of subject matter jurisdiction "State sovereign immunity bars Title II claims against state entities to the extent such claims are based on equal protection discrimination principles. *Popovich,* 276 F.3d at 816-18. All of Parr's claims are based on such equal protection principles." (6th Cir. Order, 02-5925, p. 3). The Petitioner asserted her claims also involved violations of due process. As noted by the Court in *Plyler v. Doe* "There is simply no support for appellant's suggestion that "due process" is somehow of greater stature than "equal protection".. [T]o the contrary, each aspect of the Fourteenth Amendment reflects an elementary limitation on state power." *Plyler v. Doe*, 457 U.S. 213. In *Popovich*, the Sixth Circuit ruled "We conclude that the plaintiff's action is barred by the Eleventh Amendment is so far as the action relies on congressional enforcement of the Equal Protection Clause, but it is not barred in so far as it relies on congressional enforcement of the Due Process Clause *Popovich v. Cuyahoga County Court, et al*, 276 F.3d 808,816-18(6th Cir.). This ruling by the Sixth Circuit appears to be in conflict with the Court's ruling in *Plyler.* The Petitioner had a due process liberty interest in the

preservation of her "good name, reputation, honor or integrity" as cited by the Sixth Circuit in *Kendall v. Board of ED. Of Memphis City*, 627 F.2d 1 (1980) citing this Court's ruling in *Board of Regents v. Roth*, 408 U.S. 573, 92 S.Ct. 2707. As stated in Petitioner's Statement of Facts, Respondents harmed Petitioner's professional reputation. By the creation of false information in the Petitioner's academic records, as described in Petitioner's Complaint, the harm from such false information to Petitioner's good name, reputation, honor and integrity has followed, and will follow the Petitioner to other universities as well as potential employers, for the remainder of her life. As also stated in *Kendall* "due process requires that the same administrators who investigated the matter not determine her guilt or innocence" *id, p. 5*, so the due process requirement of a fair and impartial hearing is guaranteed. As stated in Petitioner's Complaint, the submission of false information to the Appeals Committee by Respondent Curry - the Dean of the Graduate School – and Respondent Curry's indirect recommendation that the Petitioner's appeal had no merit, deprived the Petitioner of a fair and impartial hearing by allowing an administrator who investigated the matter to determine the outcome of the hearing by the submission of false information to the Appeals Committee. Finally, the due process clause clearly protects Petitioner's property interests she held in the substantial money and work Petitioner invested in the ACIS master's degree.

Question 5:

Petitioner asserts she has claims within Petitioner's Complaint against the Respondents in their individual capacities under 42 U.S.C § 1983. In *Stemler v.City of Florence,*126 F.3d 866 (1997) the Sixth Circuit stated "[G]overnment officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or

constitutional rights of which a reasonable person would have known" citing this Court's ruling in *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S.Ct. 2727, 2738. Respondents' submissions of false information to affect the outcome of the Petitioner's appeals hearings, their withholding of evidence from the Petitioner she was entitled to submit to appeal hearings, in order for Respondents to affect the outcome of such appeals hearings, and Respondent Curry's direct admission in writing that he knew he was not to influence Petitioner's hearing before the Appeals Committee in any way, and his subsequent influence of the Appeals Committee, as described in the Petitioner's Complaint, clearly showed the Respondents are not shielded from liability in their individual capacities since they would have easily known that such acts and omissions of acts, were violations of Petitioner's due process rights, and equal protection rights.

For these reasons, the Petitioner respectfully requests this writ of certiorari be granted.

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APPENDIX A-Opinion of the Sixth Circuit, May 13, 2003

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION.

Sixth Circuit Rule 28(g) limits citation to specific situations. Please see Rule 28(g) before citing in a proceeding in a court in the Sixth Circuit. If cited, a copy must be served on other parties and the Court. This notice is to be prominently displayed if this decision is reproduced.

No. 02-5925

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

LORI ANN PARR,	)	FILED
Plaintiff-Appellant,	)	MAY 13 2003
	)	LEONARD
	)	GREEN, Clerk
	)	
v.	)	ORDER
MIDDLE TENNESSEE STATE	)	
UNIVERSITY; DONALD CURRY; J	)	
.MAIER, Dr.; MICHAEL A. GIBSON;	)	
JAMES WALKER, President,	)	
Defendant-Appellees.	)	

Before: GUY, BOGGS, and DAUGHTREY, Circuit Judges.

Lori Ann Parr, a Tennessee resident proceeding pro se, appeals a district court order dismissing her complaint filed under Title II of the Americans with Disabilities Act ("ADA"), 42 U.S.C.§1213(1)(A), and the Rehabilitation Act of 1973, 29 U.S.C. § 504. This case has been referred to a panel of the court pursuant to Rule 34(j)(1), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed.Fed. R. App. P. 34(a). Parr filed two separate actions against the defendants: Middle

Tennessee State University ("MTSU") and several of its individual officers who are sued in their individual and official capacities. Parr's claims in both actions arise out of the defendants' alleged failures to make reasonable accommodations for her to complete a master's degree program, including the taking of the comprehensive examination requirement. Parr also alleges retaliation for her requests for accommodations under the ADA. In *Parr v. Middle Tenn. State Univ., et al.*, No 3-98-0865 (*Parr I*), Parr sues MTSU as well as Donald Curry, J. Maier, Dr. Michael A. Gibson, and James Walker, who are MTSU faculty and administrators. In *Parr v. Middle Tenn. State Univ., et al,* No. 3-00-0398 (*Parr II*), Parr sues MTSU as well as Dr. C. Nathan Adams, a university employee. In the latter action, the Honorable Robert L. Echols adopted a report and recommendation to consolidate and transfer the latter action with the former action. In *Parr I*, the Honorable Todd J. Campbell, District Judge, denied the defendants' motion to dismiss, but allowed an interlocutory appeal by defendant MTSU on its Eleventh Amendment immunity defense. Judge Campbell, however, allowed the action to proceed against the individual defendants. In subsequent proceedings, the district court granted the individual defendants' motion to dismiss Parr's claims against them in their individual capacities. In *Parr II,* the defendants moved to dismiss MTSU and Parr's claims against defendant Adams, in his official capacity. While the motion to dismiss was pending, the *Parr I* defendants filed a motion to stay all proceedings in both cases pending the outcome of the interlocutory appeals. The district court granted the defendants' motion to stay these proceedings, and denied MTSU's motion to dismiss. The interlocutory appeals were assigned Case Nos. 98-6701 and 99-6296. The first appeal (98-6701) involves MTSU and the second appeal (99-6296) involves the individual defendants in *Parr I.* In 99-6296, the panel reversed the district court's denial of the individual defendants' motion to dismiss based on sovereign immunity. This court remanded the case to the

district court with instructions to dismiss the claims against the individual defendants in their official capacities. In 98-6701, the panel reversed the district court's denial of MTSU's motion to dismiss and remanded the case to the district court for further proceedings in light of the en banc decision in *Popovich v. Cuyahoga County Court of Common Pleas*, 276 F.3d 808, 816-18 (6th Cir.), *cert. denied,* 123 S.Ct. 72 (2002). Prior to the resolution of the interlocutory appeals in Case Nos. 98-6701 and 99-6296, the district court dismissed Parr's complaint for lack of subject matter jurisdiction, citing this court's initial decision in *Popovich v. Cuyahoga County Court of Commons Pleas*, 227 F.3d 627, 639-640 (6th Cir. 2000) (holding that states are immune from liability under Title II of the ADA), *rev'd en banc*, 276 F.3d 808 (2002). Parr's subsequent motion to alter or amend the judgment was denied. This appeal followed. The applicability of the Eleventh Amendment to claims against the states under the ADA is a question of law which this court reviews *de novo.* See *Timmer v. Mich. Dep't of Commerce,* 104 F. 3d 833, 836 (6th Cir. 1997). Upon review, we conclude that the district court properly dismissed Parr's complaint for lack of subject matter jurisdiction. State sovereign immunity bars Title II claims against state entities to the extent such claims are based on equal protection discrimination principles. *Popovich*, 276 F. 3d at 816-18. All of Parr's claims are based on such equal protection principles. Accordingly, the district court's order is affirmed. Rule 34 (j)(2)(C), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

\s Leonard Green
Clerk

APPENDIX B – ORDER OF THE U.S. DISTRICT COURT, MIDDLE DISTRICT OF TENNESSEE, NASHVILLE DIVISION

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

LORI ANN PARR, Plaintiff,	)	
v.	)	NO. 3-98-0865 JUDGE HAYNES
MIDDLE TENNESSEE STATE UNIVERSITY, ET AL.,	)	
Defendants.	)	

ORDER

Plaintiff Lori Ann Parr filed two separate actions against the defendants: Middle Tennessee State University ("MTSU") and several of its individual officers who are sued in their individual and official capacities. In both actions, Plaintiff asserts claims under Title II of the American with Disabilities Act ("ADA"), 42 U.S.C.§ 1213 (1)(A) and the Rehabilitation Act of 1973, 29 U.S.C. § 504. Plaintiff's claims in both actions arise out of the defendants alleged failures to make reasonable accommodations for her to complete a master degree program, including on the taking of the comprehensive examination requirement. Plaintiff also

This document was entered on the docket in compliance with Rule 58 and/or Rule 79(a), FRCP, on 6/18/01 By mgc

alleges retaliation for her requests for accommodations under the ADA. In Parr v. Middle Tennessee State University et al., 3-98-0865, Parr I, Plaintiff sues MTSU as well as Donald Curry, J. Maier, Dr. Michael A. Gibson, and James Walker, who are MTSU faculty and administrators. In Parr v. Middle Tennessee State University et al., 3-00-0398, Parr II, Plaintiff sues MTSU as well as Dr. C. Nathan Adams, a university employee. In the latter action, the Honorable Robert L. Echols adopted a Report and Recommendation to consolidate and transfer the latter action with the former action. In Parr I, the Honorable Todd J. Campbell, District Judge denied the defendants' motion to dismiss, but allowed an interlocutory appeal by defendant MTSU on its Eleventh Amendment immunity defense.(Docket Entry No. 20). Judge Campbell, however, allowed the action to proceed against the individual defendants. In subsequent proceedings, the Court granted the individual defendants' motion to dismiss Plaintiff's claims against them in their individual capacities.(Docket Entry Nos. 92 and 105). In Parr II, those defendants moved to dismiss MTSU and Plaintiff's claims against the defendant Davis, in his official capacity.(Docket Entry No. 99). The Court granted the defendants' motion to stay these proceedings, pending the outcome of the interlocutory appeals. These are two such appeals now before the Sixth Circuit Court of Appeals in Case Nos. 98-6701 and 99-6296. The first appeal involves MTSU and the second appeal involves the individual defendants in Parr I. Although this Court also granted a stay of further proceedings, a court may consider its lack of subject matter jurisdiction sua sponte at any stage of proceeding. Edelman v. Jordan, 415 U.S. 651,678 (1974). In light of the Sixth Circuit's holding in Popovich v. Cuyahogg County Court of Common Pleas, 27 F. 3d. 627, 639-640 (6th Cir. 2000), that Congress exceeded its authority in applying Title II to the States, this Court concludes that it lacks subject matter jurisdiction over the Plaintiff's Title II claims under the ADA against MTSU and the individual defendants in their official capacities. When the individual defendants are

sued in their official capacities, the State is the real party. Will v. Michigan Dep't of State Police, 491 U.S. 58, 63-64 (1989). Plaintiff cannot pursue individual liability against these defendants. See Docket Entry No. 105. In its ruling, the Sixth Circuit in Popovich noted that Title II of the ADA is an extension of the Rehabilitation Act of 1973 that would be covered by its Eleventh Amendment ruling. 227 F.2d at 640. Moreover, there, as here, the Plaintiff asserted a retaliation claim for her exercise of her ADA rights, but the Popovich holding was that the retaliation was likewise foreclosed. Id. at 641. To be sure, Plaintiff's complaints also refer to claims under "any and all other applicable federal and constitutional laws." See e.g. Docket Entry No. 1, Complaint at p.2 and Docket Entry No. 108, Amended Complaint at p.2. Yet, for a cognizable claim, Plaintiff must identify the specific rights at issue. Codd v. Brown, 949 F.2d 879,882 (6th Cir.1991). Accordingly, the action is **DISMISSED** for lack of subject matter jurisdiction. It is so **ORDERED**. This is the Final Order in this action. **ENTERED** on this the 15th day of June, 2001.

\s William J. Haynes, Jr.
WILLIAM J. HAYNES, JR.
United States District Judge

APPENDIX C -Pertinent Text of Constitutional and Statutory Citations

CONSTITUTION OF THE UNITED STATES

FOURTEENTH AMENDMENT, SECTION 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

THE AMERICANS WITH DISABILITIES ACT OF 1990 §12101.Findings and purpose (a)Findings The Congress finds that (2) historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;(3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services (7) individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are

beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society.

(b)Purpose. It is the purpose of this chapter-

(1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities; (2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities; (3) to ensure that the Federal Government plays a central role in enforcing the standards established in this chapter on behalf of individuals with disabilities; and (4) to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.

Title II, Part A, of The Americans With Disabilities Act §12131.Definitions. As used in this subchapter:

(1) Public entity. The term "public entity" means- (A) any State or local government;(B) any department, agency, special purpose district, or other instrumentality of a State or States or local government; (2) Qualified individual with a disability. The term "qualified individual with a disability" means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity. **§ 12132. Discrimination**. Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation

in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity. **§ 12133. Enforcement.** The remedies, procedures, and rights set forth in section 794a of title 29 shall be the remedies, procedures, and rights this subchapter provides to any person alleging discrimination on the basis of disability in violation of section 12132 of this title. **§ 12134. Regulations.** (a) In general. Not later than 1 year after July 26, 1990, the Attorney General shall promulgate regulations in an accessible format that implement this part. Such regulations shall not include any matter within the scope of the authority of the Secretary of Transportation under section 12143, 12149, or 12164 of this title (b)Relationship to other regulations. Except for "program accessibility, existing facilities", and "communications", regulations under subsection (a) of this section shall be consistent with this chapter and with the coordination regulations under part 41 of title 28, Code of Federal Regulations (as promulgated by the Department of Health, Education, and Welfare on January 13, 1978), applicable to recipients of Federal financial assistance under section 794 of title 29. With respect to "program accessibility, existing facilities", and "communications", such regulations shall be consistent with regulations and analysis as in part 39 of title 28 of the Code of Federal Regulations, applicable to federally conducted activities under such section 794 of title 29. (c) Standards. Regulations under subsection (a) of this section shall include standards applicable to facilities and vehicles covered by this part, other than facilities, stations, rail passenger cars, and vehicles covered by part B of this subchapter. Such standards shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 12204(a) of this title.

Title IV of The Americans With Disabilities Act §12201.Construction. (a)In general. Except as otherwise provided in this chapter, nothing in this chapter shall be construed to apply a lesser standard than the standards applied under title V of the Rehabilitation Act of 1973 (29 U.S.C. 790 et seq.) or the regulations issued by Federal agencies pursuant to such title. (b) Relationship to other laws. Nothing in this chapter shall be construed to invalidate or limit the remedies, rights, and procedures of any Federal law or law of any State or political subdivision of any State or jurisdiction that provides greater or equal protection for the rights of individuals with disabilities than are afforded by this chapter (d) Accommodations and services. Nothing in this chapter shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit which such individual chooses not to accept. **§12202.State immunity.** A State shall not be immune under the eleventh amendment to the Constitution of the United States from an action in Federal or State court of competent jurisdiction for a violation of this chapter. In any action against a State for a violation of the requirements of this chapter, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than a State. § **12203. Prohibition against retaliation and coercion** (a) Retaliation. No person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by this chapter or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this chapter. (b) Interference, coercion, or intimidation It shall be unlawful to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted

or protected by this chapter. (c) Remedies and procedures The remedies and procedures available under sections 12117, 12133, and 12188 of this title shall be available to aggrieved persons for violations of subsections (a) and (b) of this section, with respect to subchapter I, subchapter II and subchapter III of this chapter, respectively. **§12213.Severability**. Should any provision in this chapter be found to be unconstitutional by a court of law, such provision shall be severed from the remainder of this chapter and such action shall not affect the enforceability of the remaining provisions of this chapter.

28 U.S.C. § 1254 (1) Sec. 1254. - Courts of appeals; certiorari; certified questions. Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods: (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

42 U.S.C. § 1983. - Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

Rehabilitation Act of 1973, § 504, as Amended through 1998; 29 U.S.C. 794 (a) **Nondiscrimination Under Federal Grants and Programs**
§504(a) No otherwise qualified individual with a disability in the United States, as defined in section 7(20), shall, solely by

reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of Congress, and such regulations may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees. **(b)** For the purposes of this section, the term "program or activity" means all of the operations of -**(1)(A)** a department, agency, special purpose district, or other instrumentality of a State or of a local government; or **(B)** the entity of such a State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;**(2)(A)** a college, university, or other postsecondary institution, or a public system of higher education;**42 U.S.C. 2000d-7** a "State shall not be immune under the Eleventh Amendment of the Constitution of the United States from suit in Federal court for a violation of section 504 of the Rehabilitation Act of 1973."

Supreme Court, U.S.
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No. 03-533

In The Supreme Court of the United States

LORI ANN PARR,

Petitioner,

v.

MIDDLE TENNESSEE STATE UNIVERSITY, DONALD CURRY, DR. J. MAIER, MICHAEL A. GIBSON, JAMES WALKER, PRESIDENT, *AND* C. NATHAN ADAMS,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

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QUESTIONS PRESENTED

1. Whether Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131-12165, exceeds Congress's authority under section 5 of the Fourteenth Amendment, thereby failing validly to abrogate the States' Eleventh Amendment immunity from private damages claims.

2. Whether the State of Tennessee waived its Eleventh Amendment immunity under section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, by accepting federal funds and whether Congress exceeded its authority under section 5 of the Fourteenth Amendment in abrogating the States' Eleventh Amendment immunity under the Rehabilitation Act.

3. Whether the severability clause of Title IV of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12213, affects the determination of Question 1.

4. Whether the Sixth Circuit Court of Appeals correctly concluded that Petitioner's claims were based upon the Equal Protection Clause of section 5 of the Fourteenth Amendment.

5. Whether the Sixth Circuit Court of Appeals correctly affirmed the district court's dismissal of the claims against the Respondents in their individual capacities.

LIST OF PARTIES

The Plaintiff/Petitioner in this action is Lori Ann Parr, who is proceeding *pro se*.

The Defendants/Respondents in this action are Middle Tennessee State University ("MTSU"), Donald Curry, Dr. J. Maier, Michael A. Gibson, James Walker, former President of MTSU, and C. Nathan Adams. Respondents Curry, Gibson and Walker are all former officials/employees of MTSU. Respondent Adams notes that he was not identified as a party before the Sixth Circuit in any capacity[1] and that he has never been served with process in his individual capacity.

In case no. 98-6701, the United States intervened as a party pursuant to 28 U.S.C. § 2403 in the Sixth Circuit. The United States did not intervene in case nos. 99-6296 or 02-5925 before the Sixth Circuit. Because the petition seeks review of the judgment in case no. 02-5925, the United States is not a party to this matter. However, pursuant to Supreme Court Rule 29.4(b), Respondents will serve a copy of this Brief on the United States Solicitor General because 28 U.S.C. § 2403(a) may apply.

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[1] As discussed in Section III, *infra.* at 19, Respondent Adams is not a proper party.

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OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

Respondents Middle Tennessee State University, Donald Curry, Dr. J. Maier, Michael A. Gibson, James Walker, former President of MTSU, and C. Nathan Adams, by and through the Attorney General and Reporter of Tennessee, respectfully oppose Petitioner Lori Ann Parr's petition to this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit in Case No. 02-5925 decided May 13, 2003.

OPINIONS BELOW

The May 13, 2003, opinion of the court of appeals in Case No. 02-5925 (App. A 1-3, *Parr III*) and the June 18, 2001, order of the district court dismissing Petitioner's Complaint (App. B 1-3) cited in the Petition are unreported. The two June 17, 2002, orders of the district court denying the Petitioner's motions to alter, amend, or clarify the June 18, 2001, order of the district court are both unreported. The June 17, 2002, orders of the district court are included in Respondents' Appendix. (R. App. A 1-2 & R. App. B 3-4).

In addition, the two previous opinions of the court of appeals addressing other issues in the same district court proceedings are also unreported. The July 16, 2002, opinion of the court of appeals in Sixth Circuit case no. 98-6701 (*Parr I*) and the district court's unreported November 20, 1998, opinion are included in the Respondents' Appendix. (R. App. C 5-6 & R. App. D & E 7-12). The December 30, 2002, opinion of the court of appeals in Sixth Circuit case no. 99-6296 (*Parr II*) and the district court's unreported

August 18, 1999, opinion are included in the Respondents' Appendix. (R. App. F 13-14; R. App. G 15-17; R. App. H 18).

JURISDICTION

The judgment of the court of appeals in *Parr III* was entered on May 13, 2003. (App. A 1-3). On August 11, 2003, Petitioner filed her petition for a writ of certiorari with this Court. Petitioner filed a revised petition in October 2003, which was docketed on October 9, 2003. On October 29, 2003, Respondents filed a waiver of right to respond to the petition. On November 13, 2003, this Court requested a response. On November 26, 2003, this Court granted Respondents' request extending the time to respond to the petition to and including February 13, 2004. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Eleventh Amendment of the United States Constitution provides:

> The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

U.S. CONST. amend. XI.

The Fourteenth Amendment of the United States Constitution provides in pertinent part:

> Section 1. . . . No State shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
>
> . . .
>
> Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

U.S. CONST. amend. XIV, §§ 1, 5.

Title II of the Americans with Disabilities Act of 1990 provides in pertinent part:

> (1) Public entity
>
> The term "public entity" means –
>
> (A) any State or local government;
>
> (B) any department, agency, special purpose district, or other instrumentality of a State or States or local government; . . .

42 U.S.C. § 12131.

Title II further provides:

> Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

42 U.S.C. § 12132.

STATEMENT OF THE CASE

Petitioner's petition seeks review of the third opinion of the court of appeals addressing various issues in consolidated district court proceedings. In the first appeal, the court of appeals held that, because Petitioner's Title II ADA claims are equal protection claims, Respondent MTSU is entitled to Eleventh Amendment immunity. *Parr v. MTSU*, No. 98-6701, slip op. (6th Cir. July 16, 2002) (R. App. C 5-6) (*Parr I*). Similarly, in the second appeal, the court of appeals held that, because Petitioner's Title II ADA claims are based on equal protection principles, Respondents Curry, Maier, Gibson, and Walker are entitled to Eleventh Amendment immunity in their official capacities. *Parr v. Curry, Maier, Gibson & Walker*, No. 99-6296, slip op. (6th Cir. Dec. 30, 2002) (R. App. F 13-14) (*Parr II*). In the third appeal, the court of appeals reiterated that, because all of Petitioner's Title II ADA claims are based on equal protection principles, her claims are barred by state sovereign immunity and her Complaint should be dismissed for lack of subject matter jurisdiction. *Parr v. MTSU, Curry, Maier, Gibson & Walker,* No. 02-5925, slip op. (6th Cir. May 13, 2003) (App. A 1-3) (*Parr III*).

A. Sixth Circuit Case No. 98-6701 – *Parr I*

On September 18, 1998, Petitioner Lori Ann Parr, who is proceeding *pro se,* filed the initial Complaint in this action in the United States District Court for the Middle District of Tennessee alleging that Respondent MTSU, an entity of the State of Tennessee, violated the ADA by not awarding her a Master's Degree in accounting and computer information services. (R. App. I 19-32). At the time she filed her Complaint, Parr was a graduate student at MTSU. *Id.* at 19 & 21, ¶¶ 1, 5.

On October 19, 1998, MTSU moved to dismiss this case for lack of subject matter jurisdiction based on the State of Tennessee's Eleventh Amendment immunity. On November 20, 1998, the district court denied MTSU's motion to dismiss. (R. App. D & E 7-12). On December 4, 1998, MTSU filed an immediate interlocutory appeal, which was docketed before the Sixth Circuit as case no. 98-6701 – *Parr I*. The Sixth Circuit held that MTSU was immune from Petitioner's Title II ADA claims on July 16, 2002. (*Parr I*, R. App. C 5-6). The Mandate in *Parr I* was issued on August 8, 2002. Petitioner did not seek review of *Parr I* by this Court at that time.

B. Sixth Circuit Case No. 99-6296 – *Parr II*

Contemporaneously with the filing of its interlocutory appeal in *Parr I*, MTSU moved to stay the district court proceedings in order to ensure that Petitioner understood that discovery would not be allowed during the pendency of the appeal. On December 16, 1998, the district court granted MTSU's motion to stay with regard to Plaintiff's claims against MTSU but denied MTSU's motion to stay with regard to the claims brought against Donald Curry, J. Maier, Michael Gibson and President James Walker. Because these four MTSU officials/employees were not named as Defendants in the Complaint,[2] the district

[2] *See* Complaint caption & Complaint § III, ¶ 6 (R. App. I 19 & 22). The only indication that any Defendants other than MTSU were sued is found in a handwritten note on the last page of the Complaint: "[a]dditionally served upon Dr. Michael Gibson, Dr. J. Maier, Dr. Donald Curry, Middle Tennessee State University, Murfreesboro, TN 37132." (R. App. I 32). The typewritten Certificate of Service also states that a certified copy of the Complaint was sent to the "President's Office, Middle Tennessee State University, Murfreesboro, TN 37132." *Id.*

court's December 16, 1998, order was the first indication these four people had that Plaintiff's Complaint was being construed to name them as Defendants. During the Case Management Conference on January 21, 1999, Plaintiff was given until February 1, 1999, to move to amend her Complaint to clarify in what, if any, capacity she was suing these four Defendants.

On January 25, 1999, Plaintiff moved to amend her complaint to sue Defendants Curry, Maier, Gibson, and Walker in their individual and official capacities. (R. App. J 33-34). On February 11, 1999, the district court granted Plaintiff's motion to amend. (R. App. K 35-36). On February 19, 1999, they moved to dismiss the Complaint against them in all capacities. On August 18, 1999, the district court denied that motion. (R. App. G & H 15-18). On September 16, 1999, these four Defendants filed their Notice of Appeal with regard to Plaintiff's claims brought against them in their official capacities,[3] which was docketed before the Sixth Circuit as case no. 99-6296 – *Parr II*. On December 30, 2002, the court of appeals held that Respondents Curry, Maier, Gibson and Walker are entitled to Eleventh Amendment immunity from Petitioner's Title II ADA claims and ordered that the district court dismiss the claims against them in their official capacities for lack of subject matter jurisdiction. (*Parr II*, R. App. F 13-14). The mandate in *Parr II* was issued on January 21, 2003. Petitioner did not seek review of *Parr II* by this Court at that time.

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[3] On March 28, 2001, the district court dismissed all of Petitioner's individual capacity claims against Curry, Maier, Gibson and Walker. (R. App. O 52-53).

C. Sixth Circuit Case No. 02-5925 – *Parr III*

During the pendency of both *Parr I* and *Parr II*, on April 26, 2000, Plaintiff filed a second federal court lawsuit making essentially the same allegations contained in her earlier Complaint. *Parr v. MTSU & Dr. C. Nathan Adams, in his official & individual capacities,* M.D. Tenn. Case No. 3:00-0398 (R. App. L 37-45). On April 27, 2000, the district court ordered that a Federal Rule of Civil Procedure 16 hearing be held to determine whether this Complaint should be dismissed as being malicious or frivolous in nature.

After holding a Rule 16 hearing, on July 12, 2000, Magistrate Judge Brown recommended that some of plaintiff's claims should not survive a frivolity review and that the surviving claims should be consolidated with the earlier case. (R. App. M 46-49). Plaintiff did not file any objections to the Magistrate's Report and Recommendation. On August 28, 2000, the district court adopted the Report and Recommendation and consolidated Plaintiff's two cases. (R. App. N 50-51).

On September 11, 2000, Defendants MTSU and Adams, in his official capacity[4],[5], moved to dismiss Plaintiff's

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[4] Defendant Adams was never served with process in his individual capacity.

[5] Plaintiff's Notice of Appeal did not identify Defendant Adams as a party to the appeal. (R. App. R 75). On July 22, 2002, Plaintiff filed a "Notice of Corrections" purportedly to her Notice of Appeal, in which she identifies Defendant Adams as an appellee. (R. App. T 82). Plaintiff's Notice of Corrections was not filed within 30 days of the June 17, 2002, final orders of the district court dismissing Plaintiff's case. Defendant Adams was not identified by the Sixth Circuit on the Docket Sheet for Plaintiff's appeal.

Complaint in case no. 3:00-0398 for lack of subject matter jurisdiction based upon Tennessee's Eleventh Amendment immunity from Plaintiff's claims. That motion was granted by the district court on June 18, 2001. (App. B 1-3).

On March 28, 2001, the district court dismissed all of Parr's claims against the Defendants in their individual capacities.[6] (R. App. O 52-53). Also on March 28, 2001, the district court granted Plaintiff's request to amend her Complaint to include allegations under the Rehabilitation Act. (R. App. P 54-55); *see also* Amended Complaint (R. App. Q 56-74).

On June 18, 2001, the district court *sua sponte* dismissed any claims remaining before it in the consolidated action. (App. B 1-3).[7] Thereafter, on June 25, 2001, Plaintiff filed a "Motion to Amend and/or Alter Final Judgment and for More Clarity in Final Judgment"; and on July 24, 2001, Plaintiff filed a "Motion for Leave to Amend Plaintiff's Motion to Alter and/or Amend Judgment." The district court's two June 17, 2002, orders denying those two motions were the only orders from which Parr appealed to the Sixth Circuit in her third appeal. (R. App. A 1-2 & R. App. B 3-4). On July 12, 2002, Plaintiff filed her

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[6] Because the two cases had been consolidated on August 28, 2000, this order included a dismissal of any claims Plaintiff was purporting to bring against Defendant Adams in his individual capacity. *See also*, n.4, *supra* (noting that Defendant Adams was never served in his individual capacity).

[7] That order reached the opposite conclusion of the two district court orders previously appealed in *Parr I* and *Parr II* with regard to the State's immunity from Petitioner's ADA claims. (R. App. D & E 7-12; R. App. G & H 15-18).

Notice of Appeal, which was docketed before the Sixth Circuit as case no. 02-5925 – *Parr III*.

On May 13, 2003, the Sixth Circuit issued its opinion in *Parr III*. (App. A 1-3). On August 11, 2003, Petitioner filed her petition for a writ of certiorari with this Court. Petitioner's revised petition was docketed on October 9, 2003.

D. Facts

Petitioner, Lori Ann Parr, was a graduate student at Respondent MTSU in the program of Accounting and Computer Information Systems from 1993 until 1997. (R. App. I 19 & 21). She alleges in her complaints[8] that she has two disabilities: (1) conversion disorder, which causes Petitioner to black out when under stress; and (2) carpal/cubital tunnel syndrome, which affects Petitioner's ability to write or type. (R. App. I 21-22, ¶5).

Because of these disabilities, Petitioner sought and received certain accommodations from MTSU including extra time and use of tape recorders. (R. App. I 21, ¶5). Petitioner alleges that she was "effectively blocked by the acts of the Defendants from completing her first masters degree." *Id*. In October 1994, Petitioner requested additional time for an assignment. (R. App. I 22-23, ¶7). When that request was denied, Petitioner alleges she was treated in the emergency room for the stress she endured trying to complete the assignment on time. *Id*. The stress also forced her to withdraw from the class and she filed a

[8] Petitioner's three complaints are found at R. App. I 19-32, R. App. L 37-45, and R. App. Q 56-74.

formal internal complaint alleging disability discrimination. *Id.* Petitioner alleges that she was then retaliated against for filing the internal complaint. (R. App. I 23, ¶8). This alleged retaliation included not being allowed to use department equipment because she had not gone through proper channels; being denied an interview for a graduate assistantship even though non-U.S. citizens were interviewed and hired; being forced to take a test in a small, unventilated supply closet; being subjected to a professor entering that closet, stepping on Petitioner's foot and standing with his crotch in her face causing distress to her unborn child; and denying Petitioner copies of her educational record, institutional policies and procedures, explanations for her grades, and identities of certain persons. (R. App. I 23-25, ¶8A). These actions were all outside the one-year statute of limitations when Petitioner filed her initial complaint.

The only actions within the one-year statute of limitations relate to Petitioner's appeal to the Graduate Council regarding the question on her comprehensive examination, her requests for information, investigations into her earlier allegations and an allegation that she was discriminated against because a professor used old tests and she could not obtain one. (R. App. L 41-42, ¶10).

After Petitioner failed to complete her Master's Degree in the ACIS program she entered the graduate program in Criminal Justice. (R. App. I 21). She graduated in May 2003. (Pet. 3 n.2).

Petitioner seeks as relief to be awarded a Master's Degree in Accounting and Computer Information Systems and two years' salary as an accountant. (R. App. L 31).

ARGUMENT

Rule 10 of the Rules of the Supreme Court emphasizes that certiorari review is a matter of judicial discretion not a matter of right. This Court does not automatically grant petitions for certiorari; instead, this Court grants certiorari review only for compelling reasons. "This Court's review. . . is discretionary and depends on numerous factors other than the perceived correctness of the judgment [the Court is] asked to review." *Ross v. Moffitt*, 417 U.S. 600, 616-17 (1974). Certiorari review is granted "sparingly, and only in cases of peculiar gravity and general importance, or in order to secure uniformity of decision. . . ." *Hamilton-Brown Shoe Co. v. Wolf Bros. & Co.*, 240 U.S. 251, 258 (1916).

Respondents urge this Court to exercise its discretion to deny the petition. The convoluted procedural posture of this appeal precludes it from being an appropriate vehicle for addressing any of the questions presented in the petition. Specifically, the petition is untimely with regard to questions one, three and four. In addition, the second and fifth questions presented in the petition were not addressed by the appeals court. Thus, Respondents respectfully request that the petition be denied.

Alternatively, in the event that this Court determines that certiorari review is appropriate with respect to questions one, three or four, Respondents respectfully request that the Court hold the petition in abeyance pending the resolution of *Tennessee v. Lane*, No. 02-1667, which was argued before this Court on January 13, 2004.

I. This Court Should Deny Review of the First, Third and Fourth Questions Presented in the Petition Because, as to These Three Questions, the Petition Is Untimely.

The first question presented in the petition – whether Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131-12165 ("ADA"), exceeds Congress's authority under section 5 of the Fourteenth Amendment, thereby failing validly to abrogate the States' Eleventh Amendment immunity from private damages claims – encompasses the third[9] and fourth[10] questions presented. Thus, the first, third and fourth questions presented are essentially one question, which was resolved by the Sixth Circuit as to Respondent MTSU in *Parr I* and which was resolved by the Sixth Circuit as to the official capacity claims against Respondents Curry, Maier, Gibson and Walker in *Parr II*. Because Petitioner did not seek review by this Court in *Parr I* or *Parr II*, and the time for filing petitions for writs of certiorari with respect to those two judgments has long since passed, the petition is untimely with regard to the first, third and fourth questions presented.

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[9] The third question is whether the severability clause of Title IV of the ADA affects the determination of Question 1.

[10] The fourth question is whether the appeals court properly held that Respondents are immune from Petitioner's Title II ADA claims because they are based on equal protection principles.

A. Petitioner waived the issue of the States' Eleventh Amendment immunity from suit under Title II of the ADA because she failed to file a petition for a writ of certiorari in *Parr I* or *Parr II*.

On July 16, 2002, in *Parr I*, the court of appeals held that, because Petitioner's Title II ADA claims are equal protection claims, Respondent MTSU is entitled to Eleventh Amendment immunity. (R. App. C 5-6). Petitioner did not seek review of *Parr I* by this Court within the time permitted by the Rules of this Court. Then, on December 30, 2002, in *Parr II*, the court of appeals held that, because Petitioner's Title II ADA claims are based on equal protection principles, Respondents Curry, Maier, Gibson and Walker are entitled to Eleventh Amendment immunity in their official capacities. (R. App. F 13-14). Petitioner did not seek a timely review of *Parr II* by this Court either.

Petitioner is now seeking review of the same question based upon the court of appeals' May 13, 2003, opinion in *Parr III*, which, as to the Title II ADA claims against Respondents MTSU, Curry, Maier, Gibson and Walker, merely reiterated the court's earlier judgment that those claims are barred by state sovereign immunity and that her Complaint should be dismissed for lack of subject matter jurisdiction. (App. A 1-3).

Petitioner did not seek review by this Court in *Parr I* or in *Parr II* in a timely fashion after the appeals court entered judgment in those two appeals. The first, third[11]

[11] Although the third question was not specifically addressed by the appeals court, the dismissal of Petitioner's retaliation claims is consistent with the appeals court's prior *en banc* holding in *Popovich v.*

(Continued on following page)

and fourth[12] questions presented in the petition are the same questions ruled on in *Parr I* and *Parr II*. Because Petitioner failed to seek review by this Court of *Parr I* and *Parr II* in a timely fashion, her petition seeking review of the same exact issues in *Parr III* is untimely and should be denied.

B. Alternatively, should this Court find that these three questions are timely presented, this Court should hold this petition pending the decision in *Tennessee v. Lane*.

On January 13, 2004, this Court heard oral arguments in *Tennessee v. Lane*, No. 02-1667, on the same question presented as the first, third and fourth questions in the instant petition – whether Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131-12165 ("ADA"), exceeds Congress's authority under section 5 of the Fourteenth Amendment, thereby failing validly to abrogate the States' Eleventh Amendment immunity from private damages claims. Should this Court determine that

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Cuyahoga County Ct. Com. Pl., 276 F.3d 808, 816 (6th Cir.) (*en banc*), *cert. denied*, 123 S. Ct. 72 (2002), that the States are immune from retaliation claims based on equal protection claims.

[12] Furthermore, with regard to the fourth question, whether Petitioner's specific factual allegations are equal protection type claims or due process type claims is not a question worthy of this Court's review, because this question is not an important question of federal law. *See* Sup. Ct. Rule 10. At most, this question involves a "misapplication of a properly stated rule of law." *Id.* Note, in denying certiorari review of the second question presented in the petition filed in *Lane*, this Court has previously passed on the opportunity to review the distinctions made by the Sixth Circuit regarding immunity for equal protection claims versus no immunity for due process claims.

the petition is timely with regard to this issue, Respondents respectfully request the Court to hold the instant petition in abeyance pending the Court's resolution of *Lane*.

II. This Court Should Deny Review of the Second and Fifth Questions Presented in the Petition Because These Two Questions Were Not Addressed by the Court of Appeals.

A. This Court's traditional rule precludes review of questions not addressed by the appeals court.

Typically, this Court declines to hear questions that have not been decided below. *See, e.g.*, *Archer v. Warner*, 538 U.S. 314, 322 (2003) ("Without suggesting that these additional arguments are meritorious, we note that the Court of Appeals did not determine the merits of either argument, both of which are, in any event, outside the scope of the question presented and insufficiently addressed below."); *Blessing v. Freestone*, 520 U.S. 329, 340 n.3 (1997) ("We decline to address these questions which were neither raised nor decided below, and were not presented in the petition for certiorari."); *United States v. Williams*, 504 U.S. 36, 41 (1992) ("Our traditional rule . . . precludes a grant of certiorari only when 'the question presented was not pressed or passed upon below.'"). Because the petition is seeking review by this Court of two questions that were not addressed by the Sixth Circuit, this Court should deny review of the second and fifth questions presented.

B. The appeals court properly did not address the second question presented – whether the States have Eleventh Amendment immunity under the Rehabilitation Act.

The second question presented in the petition – whether the States have Eleventh Amendment immunity under the Rehabilitation Act – was not addressed by the appeals court. Although on page 1 of the opinion (App. A p. 1) the court of appeals notes that Petitioner's Complaint was filed under the ADA and the Rehabilitation Act, the court's holding does not address the Rehabilitation Act claim (App. A p. 3) because it was not properly raised by Petitioner before the appeals court. Petitioner did not seek reconsideration or clarification by the court of appeals regarding the Rehabilitation Act claim.

Petitioner waived the Rehabilitation Act question because her Notice of Appeal to the Sixth Circuit did not include the Rehabilitation Act question. Federal Rule of Appellate Procedure 3(c)(1)(B) requires that in the notice of appeal, an appealing party must "designate the judgment, order, or part thereof being appealed." "Compliance with this Rule 'is both a mandatory and jurisdictional prerequisite.'" *United States v. Glover*, 242 F.3d 333, 335 (6th Cir. 2001) (quoting *United States v. Means*, 133 F.3d 444, 448 (6th Cir. 1998)). Under Rule 3(c) of the Federal Rules of Appellate Procedure, "'where a notice of appeal specifies a particular order, only the specified issues related to that order may be raised on appeal.'" *United States v. Page*, 58 Fed. Appx. 79, 81 n.3 (6th Cir. 2003) (quoting *Caldwell v. Moore*, 968 F.2d 595, 598 (6th Cir. 1992)).

Plaintiff's Notice of Appeal specifically identifies "the final judgment/BY ORDER dismissing case for lack of subject matter jurisdiction entered in this action on the 17th day of June, 2002" as the subject of her appeal. (R. App. R 75). The district court entered two orders on June 17, 2002, neither of which addresses Petitioner's Rehabilitation Act claims. (R. App. A & B 1-4). Because Petitioner did not include the district court's June 18, 2001, order dismissing her Rehabilitation Act claims (App. B) in her Notice of Appeal, Petitioner waived the appeal of this question.[13] Therefore, the appeals court did not have jurisdiction over Petitioner's claims under the Rehabilitation Act.

For all of these reasons, this case is not an appropriate vehicle for deciding the Rehabilitation Act question.[14]

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[13] Even if Petitioner's mentioning of the Rehabilitation Act in her "Statement of Issues," attached to her Notice of Appeal, could be construed as complying with Rule 3 (R. App. S 77), Petitioner's failure to raise the Rehabilitation Act issue in her motion to reconsider before the district court waived her right to raise that issue on appeal. Petitioner made no mention of the Rehabilitation Act or her claims under the Rehabilitation Act in either (1) her June 25, 2001, "Motion to Amend and/or Alter Final Judgment and for More Clarity in Final Judgment," or (2) her July 24, 2001, "Motion for Leave to Amend Plaintiff's Motion to Alter and/or Amend Judgment." Instead, the only issue Petitioner raised in these two motions to reconsider was whether the district court erred in dismissing her ADA claims.

[14] The court of appeals are divided on the question whether the States enjoy Eleventh Amendment immunity from private damages claims under the Rehabilitation Act. *Compare Reickenbacker v. Foster*, 274 F.3d 974, 983 (5th Cir. 2001) (Congress exceeded its authority in abrogating the States' immunity under the Rehabilitation Act), *and Garcia v. S.U.N.Y. Health Sci. Ctr. of Brooklyn*, 280 F.3d 98, 114-15 (2d Cir. 2001) (the acceptance of federal funds under the Rehabilitation Act

(Continued on following page)

C. The appeals court properly did not address the fifth question presented – whether the appeals court correctly affirmed the district court's dismissal of the claims against the Respondents in their individual capacities.

The fifth question presented in the petition – whether the appeals court correctly affirmed the district court's dismissal of the claims against the Respondents in their individual capacities – was not addressed by the appeals court. On March 28, 2001, the district court dismissed the claims against the Respondents in their individual capacities. (R. App. O 52-53). Petitioner did not identify the district court's March 28, 2001, order dismissing the individual capacity claims in her Notice of Appeal. (R. App. R 75).[15] Thus, Petitioner failed to appeal this issue to the Sixth Circuit.

In addition, following *Wathen v. General Electric Co.*, 115 F.3d 400, 404 (6th Cir. 1997) (holding that employees

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by the State of New York did not constitute a knowing waiver of sovereign immunity), *with Shepard v. Irving*, 77 Fed. Appx. 615, 618-19 (4th Cir. 2003) (a state's acceptance of federal funds under the Rehabilitation Act constitutes a voluntary waiver of sovereign immunity), *and Koslow v. Pennsylvania*, 302 F.3d 161, 169-71 (3d Cir. 2002) (same), *cert. denied*, 537 U.S. 1232 (2003), *and Robinson v. Kansas*, 295 F.3d 1183, 1189-90 (10th Cir. 2002) (same), *cert. denied*, 123 S. Ct. 2574 (2003), *and Nihiser v. Ohio Envtl. Prot. Agency*, 269 F.3d 626, 628 (6th Cir. 2001) (same), *cert. denied*, 536 U.S. 922 (2002), *and Douglas v. California Dep't of Youth Auth.*, 271 F.3d 812, 820-21 (9th Cir. 2001) (same), *cert. denied*, 536 U.S. 924 (2002), *and Jim C. v. United States*, 235 F.3d 1079, 1081-82 (8th Cir. 2000) (*en banc*) (same), *cert. denied sub nom. Arkansas Dep't of Educ. v. Jim C.*, 533 U.S. 949 (2001).

[15] Similarly, Petitioner failed to mention the claims against the individual Respondents in her "Certificate and Statement of the Issues," which she filed with her notice of appeal. (R. App. S 77).

in their individual capacities cannot be held liable under Title VII), the district court properly dismissed the individual capacity ADA claims against the Respondents. (R. App. O 52-53). Petitioner does not identify any conflict between the district court's decision and this Court's precedents. Nor does Petitioner identify a split among the circuits on the issue of individual liability under the ADA.

Furthermore, in the district court's June 18, 2001, decision (App. B), which was also not included in Petitioner's Notice of Appeal (R. App. R 75), the district court reaffirmed the dismissal of the individual capacity claims by noting that although Petitioner's "complaints also refer to claims under 'any and all other applicable federal and constitutional laws' . . . , for a cognizable claim, [Petitioner] must identify the specific rights at issue. *Codd v. Brown*, 949 F.2d 879, 882 (6th Cir. 1991)." (App. B 3). Again, Petitioner has not demonstrated that this holding conflicts with this Court's precedents or that there is a conflict among the circuits pertaining to this issue warranting an exercise of this Court's certiorari jurisdiction.

III. Respondent Adams Is Not A Proper Party.

Petitioner's Notice of Appeal to the Sixth Circuit did not identify Respondent Adams as a party to the appeal. (R. App. R 75). On July 22, 2002, Petitioner filed a "Notice of Corrections" to her Notice of Appeal, in which she identifies Adams as an appellee. (R. App. T 82). However, Petitioner's Notice of Corrections was untimely because it was not filed within 30 days of the June 17, 2002, final orders of the district court dismissing Petitioner's case. (R. App. A & B 1-4). The Sixth Circuit thus correctly declined to identify Adams on the Docket Sheet for *Parr III* as a

party to the appeal. Accordingly, to the extent that any of the questions presented in the petition arise from her claims against Respondent Adams, review by this Court is not warranted because Petitioner failed to perfect an appeal of those issues in the Sixth Circuit.

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be denied in its entirety. In the alternative, the first, third and fourth questions presented in the petition should be held in abeyance pending this Court's decision in *Tennessee v. Lane*, No. 02-1667.

Respectfully submitted,

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for the State of Tennessee

MICHAEL E. MOORE
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APPENDIX A

THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

LORI ANN PARR Plaintiff	)	
v.	)	Case No.: 3:98-0865
MIDDLE TENNESSEE STATE UNIVERSITY, et al.	)	JUDGE HAYNES
Defendants.	)	

PLAINTIFF'S MOTION FOR LEAVE TO AMEND PLAINTIFF'S MOTION TO ALTER AND/OR AMEND JUDGMENT

(Filed Jul. 24, 2001)

Comes now the plaintiff before this Honorable Court with her Motion and would respectfully request of this Honorable Court that the Court would grant to plaintiff leave to amend plaintiff's Motion To Alter and/or Amend entered on June 26, 2001 [115-1], for the following reasons:

1. Plaintiff has come into receipt of knowledge, post-filing of her Motion To Amend and/or Alter, (see attached Docket Summary from the U.S. Court of Appeals For the Sixth Circuit, *Popovich v. Cuyahoga Cnty Court, et al.*, #98-4100, Attachment 1), that the *Popovich* case has been resubmitted to the U.S. Court of Appeals for the Sixth Circuit, for re-hearing en banc, and that such case was argued on June 6, 2001 on the issues of Title II and Title III of the Americans With Disabilities Act – which were, in part, the

basis of the Court's final judgment in this matter – and that the U.S. Court of Appeals For the Sixth Circuit has not issued a final ruling in *Popovich*, on these issues.

* * *

This document was entered on the docket in compliance with Rule 58 and/or Rule 79(a)

FRCP on 6-17-02 By gi

ORDER

Based upon *Popovich v. Cuyahoga County Court of Pleas*, 276 F.3d 808 (6th Cir. 2002), this motion is DENIED. This action is DISMISSED.

/s/ Judge William J. Haynes, Jr.
USDJ
6-14-02

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

LORI ANN PARR Plaintiff	)	
v.	)	Case No.: 3:98-0865
MIDDLE TENNESSEE STATE UNIVERSITY, et al.	)	JUDGE HAYNES
Defendants.	)	

PLAINTIFF'S MOTION TO AMEND AND/OR ALTER FINAL JUDGMENT, AND FOR MORE CLARITY IN FINAL JUDGMENT

(Filed Jun. 25, 2001)

Comes now the plaintiff before this Honorable Court with her Motion and would respectfully request of this Honorable Court that the Court would alter and/or amend its final judgment, and provide more clarity of the final judgment, as follows:

1. The Court stated in its Order "Plaintiff's claims in both actions arise out of the defendants alleged failures to make reasonable accommodations for her to complete a master degree program, including on the taking of the comprehensive examination." In response to this statement by the Court, the plaintiff would show:

    A.) The plaintiff stated in her Complaint on pages 5, 6, and 11, that the actions of plaintiff's Complaint were actions arising from acts and omissions of acts that occurred within the one-year statutory time limit prior to the filing

> of the plaintiff's initial Complaint, *Parr* I (3-98-0865), as indicated on page 11 of plaintiff's Amended Complaint, entitled "Part B. Discriminatory Acts That Occurred Within The One-Year Statue [sic]", and acts occurring within the one-year statute of the plaintiff's second Complaint, Parr II (3-00-0398), that plaintiff has filed with the Court. All other acts, and omissions of acts, including the plaintiff's request for an accommodation and
>
> * * *

This document was entered on the docket in compliance with Rule 58 and/or Rule 79(a)

FRCP on 6-17-02 By gi

ORDER

This motion is DENIED. *See Popovich v. Cuyahoga County Court of Pleas*, 276 F.3d 808 (6th Cir. 2002). This action is DISMISSED.

/s/ Judge William J. Haynes, Jr.
USDJ
6-17-02

APPENDIX C

No. 98-6701

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

LORI ANN PARR

Plaintiff-Appellee,

v.

MIDDLE TENNESSEE STATE UNIVERSITY,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE

(Filed Jul. 16, 2002)

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

Sixth Circuit Rule 28(g) limits citation to specific situations. Please see Rule 28(g) before citing in a proceeding in a court in the Sixth Circuit. If cited, a copy must be served on other parties and the Court.

This notice is to be *prominently* displayed if this decision is reproduced.

BEFORE: MARTIN, Chief Circuit Judge, SUHRHEINRICH and SILER, Circuit Judges.

PER CURIAM. Lori Parr, a student at Middle Tennessee State University, sued the University, claiming that it had discriminated against her on the basis of her disability in violation of the Americans with Disabilities

Act. The University filed a motion to dismiss, claiming Eleventh Amendment immunity. The district court denied the University's motion and the University appealed.

In *Popovich v. Cuyahoga County Court of Common Pleas*, 276 F.3d 808, 816-18 (6th Cir. 2002), this court held that the Eleventh Amendment bars Title II claims against state entities that are based on equal protection discrimination principles. *See also Trustees of University of Alabama v. Garrett*, 531 U.S. 356, 121 S.Ct. 955, 148 L.Ed.2d 866 (2001). Because Parr's claim is based on such equal protection principles, we REVERSE the district court's denial of the University's motion to dismiss and REMAND this case to the district court for further proceedings in light of *Popovich*.

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE

LORI PARR	)	
	)	NO. 3:98-0865
v.	)	JUDGE CAMPBELL
MIDDLE TENNESSEE STATE	)	
UNIVERSITY	)	

MEMORANDUM

Pending before the Court is Defendant's Motion to Dismiss (Docket No. 7). For the reasons stated herein, Defendant's Motion is DENIED.

FACTS

This action arises under the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12101, *et seq.* Plaintiff contends that Defendant has discriminated and retaliated against her based upon her two disabilities, carpal and cubital tunnel syndrome and conversion disorder. Plaintiff is currently enrolled in the graduate program of the Criminal Justice Administration Department at Defendant's institution. She alleges that, since April of 1996, Defendant has effectively blocked her from completing her first masters degree in accounting and computer information systems. Plaintiff seeks injunctive relief, compensatory and punitive damages, fees and costs.

This document was entered on
the docket in compliance with
Rule 58 and/or Rule 79(a),
FRCP, on 11/20/98 By M. Klassen

Defendant moves to dismiss Plaintiff's Complaint, arguing that her ADA claims are barred by the Eleventh Amendment to the U.S. Constitution and by the applicable statute of limitations.

MOTIONS TO DISMISS

In considering a motion to dismiss for failure to state a claim on which relief can be granted, the court must accept as true all factual allegations in the complaint. *Broyde v. Gotham Tower, Inc.*, 13 F.3d 994, 996 (6th Cir. 1994), *cert. denied*, 511 U.S. 1128, 114 S.Ct. 2137, 128 L.Ed.2d 866 (1994). The motion should be granted only if it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. *Id.*

A motion to dismiss for failure to state a claim upon which relief can be granted must be viewed in the light most favorable to the party opposing the motion. *State of Ohio ex rel. Fisher v. Louis Trauth Dairy, Inc.*, 856 F.Supp. 1229, 1232 (S.D. Ohio 1994). The purpose of a motion to dismiss for failure to state a claim is to allow the defendant to test whether, as a matter of law, the plaintiff is entitled to legal relief even if everything alleged in the complaint is true. *Mayer v. Mylod*, 988 F.2d 635, 638 (6th Cir. 1993).

In other words, in deciding a motion to dismiss, the function of the district court is to test the legal sufficiency of the complaint. *City of Toledo v. Beazer Materials and Services, Inc.*, 833 F.Supp. 646, 650 (N.D. Ohio 1993). The district court is without authority to dismiss claims unless it can be demonstrated beyond doubt that the plaintiff can prove no set of facts that would entitle him to relief. *Id.*

DEFENDANT'S ELEVENTH AMENDMENT DEFENSE

Defendant presents an issue which is currently unsettled and pending in four cases before the Sixth Circuit Court of Appeals: whether Congress acted pursuant to a valid exercise of power in making an unequivocal and textual abrogation of Eleventh Amendment immunity in the ADA.

States typically enjoy immunity from suit pursuant to the Eleventh Amendment: "The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." U.S. Const. amend. XI. Although the text of the Amendment does not appear to restrict jurisdiction over suits by citizens of the state being sued, the Supreme Court has long held that such actions are also barred. *See, e.g., Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 116 S.Ct. 1114, 1122, 134 L.Ed.2d 252 (1996); *Hans v. Louisiana*, 134 U.S. 1, 10 S.Ct. 504, 33 L.Ed.2d 842 (1890). In order to abrogate that immunity, Congress must meet a two-pronged test: (1) it must unequivocally express its intent to abrogate the immunity; and (2) it must act pursuant to a valid exercise of power. *Seminole Tribe*, 116 S.Ct. at 1123.

The ADA includes the following provision:

> A State shall not be immune under the eleventh amendment to the Constitution of the United States from an action in Federal or State court of competent jurisdiction for a violation of this chapter. In any action against a state for a violation of the requirements of this chapter, remedies (including remedies at both law and equity) are available for such a violation to the same extent

> as such remedies are available for such a violation in an action against any public or private entity other than a state.

42 U.S.C. § 12202 (1995).

It is undisputed that the ADA meets the first prong of the two-part test. Clearly, Congress unequivocally expressed its intent to abrogate immunity. Defendant argues, however, that Congress did not act pursuant to a valid exercise of power.

As noted, the Sixth Circuit has not ruled on this question, and the Supreme Court has not yet addressed this issue. Nonetheless, this Court is persuaded by the reasoning of those courts which have concluded that the ADA was properly enacted pursuant to Congress' power to enforce the Fourteenth Amendment. *See, e.g., Johnson v. State Technology Center at Memphis*, 1998 WL 704259 (W.D. Tenn. Oct. 6, 1998) and cases cited therein. Accordingly, Defendant's Motion to Dismiss based upon the Eleventh Amendment is DENIED.

STATUTE OF LIMITATIONS

The parties agree that the statute of limitations for Plaintiff's ADA claims is one year. Tenn. Code Ann. § 28-3-104. Plaintiff even designates, within her Complaint, those acts which occurred before the one-year statute of limitations and those acts which occurred within the one-year statute of limitations. *See* Docket No. 1, pp. 4 and 8.

Plaintiff's Complaint was filed on September 18, 1998. Thus, all acts which occurred prior to September 18, 1997, are barred by the one-year statute unless Plaintiff can show a continuing violation under the ADA. *Scarborough*

v. Brown Group, Inc., 935 F.Supp. 954, 958-59 (W.D. Tenn. 1995); *Gandy v. Sullivan County, Tennessee*, 24 F.3d 861, 864 (6th Cir. 1994); *Equal Employment Opportunity Comm'n v. Penton Industrial Publishing Co., Inc.*, 851 F.2d 835, 837-38 (6th Cir. 1988).

On this Motion to Dismiss, the Court must accept all allegations of the Complaint as true. Plaintiff alleges a long-term pattern of unlawful discriminatory and retaliatory act. *See* Complaint, p. 10. Accordingly, the Court cannot find that her claims are not continuing violations or are barred by the statute of limitations until the proof has been developed through discovery. Defendant's Motion to Dismiss based upon the statute of limitations is DENIED.

CONCLUSION

For these reasons, Defendant's Motion to Dismiss is DENIED. Pursuant to Rule 72 of the Federal Rules of Civil Procedure and 28 U.S.C. § 636, this case is referred to the Magistrate Judge for entry of a scheduling order and for all pretrial, nondispositive motions.

IT IS SO ORDERED.

/s/ Todd J. Campbell
TODD J. CAMPBELL
UNITED STATES DISTRICT JUDGE

APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE

LORI PARR	)	
	)	NO. 3:98-0865
v.	)	JUDGE CAMPBELL
MIDDLE TENNESSEE STATE UNIVERSITY	)	

ORDER

Pending before the Court is Defendant's Motion to Dismiss (Docket No. 7). For the reasons stated in the accompanying Memorandum, Defendant's Motion is DENIED.

Pursuant to Rule 72 of the Federal Rules of Civil Procedure and 28 U.S.C. § 636, this case is referred to the Magistrate Judge for entry of a scheduling order and for all pretrial, nondispositive motions.

IT IS SO ORDERED.

/s/ Todd J. Campbell
TODD J. CAMPBELL
UNITED STATES DISTRICT JUDGE

This document was entered on the docket in compliance with Rule 58 and/or Rule 79(a)

FRCP on 11/20/98 By M. Klassen

APPENDIX F

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 99-6296

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

LORI ANN PARR,

Plaintiff-Appellee,

v.

MIDDLE TENNESSEE STATE UNIVERSITY,

Defendant,

DONALD CURRY, J. MAIER, DR. MICHAEL GIBSON, JAMES WALKER,

Defendant-Appellants.

On Appeal from the United States District Court for the Middle District of Tennessee

_____/

(Filed Dec. 30, 2002)

Before: KENNEDY and GILMAN, Circuit Judges; SARGUS, District Judge.*

PER CURIAM. Lori Ann Parr, a graduate student at Middle Tennessee State University ("MTSU"), filed suit alleging that officials at MTSU discriminated and retaliated against her based on her disability in violation of Title II of the Americans with Disabilities Act, 42 U.S.C.

* The Honorable Judge Edmund A. Sargus, Jr., United States District Judge for the Southern District of Ohio, sitting by designation.

§ 12101, *et seq*. Appellants, Donald Curry, J. Maier, Dr. Michael Gibson, and James Walker, in their official capacities, appeal the district court's denial of their motion to dismiss based on state sovereign immunity.

In *Popovich v. Cuyahoga County Court of Common Pleas*, 276 F.3d 808 (6th Cir. 2002) (en banc), this Court held that state sovereign immunity bars Title II claims against state entities that are based on equal protection discrimination principles. *See also Trustees of University of Alabama v. Garrett*, 531 U.S. 356 (2001); *Robinson v. University of Akron School of Law*, 307 F.3d 409 (6th Cir. 2002); *Carten v. Kent State Univ.*, 282 F.3d 391 (6th Cir. 2002). Because Parr's claim is based on such equal protection principles, we REVERSE the district court's denial of the Appellants' motion to dismiss and REMAND this case to the district court with instructions to dismiss the claims against Appellants Donald Curry, J. Maier, Dr. Michael Gibson, and James Walker in their official capacities for lack of jurisdiction.[1]

[1] MTSU appealed the denial of summary judgment based on sovereign immunity separately. This Court has reversed and remanded that case as well, in an unpublished opinion. *Parr v. Middle Tennessee State Univ.*, 40 Fed. Appx. 910 (6th Cir. July 16, 2002).

APPENDIX G

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE

LORI PARR,	)	
	)	
v.	)	NO. 3:98-0865
	)	JUDGE CAMPBELL
MIDDLE TENNESSEE	)	
STATE UNIVERSITY, et al.	)	

MEMORANDUM

Pending before the Court is a Motion to Dismiss or, Alternatively, to Stay, filed by Defendants Gibson, Maier, Curry and Walker (Docket No.37). For the reasons stated herein, Defendants' Motion is DENIED.

This action arises under the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12101, *et seq*. Plaintiff contends that Defendants have discriminated and retaliated against her based upon her two disabilities, carpal and cubital tunnel syndrome and conversion disorder. Plaintiff is currently enrolled in the graduate program of the Criminal Justice Administration Department at Defendant's institution. She alleges that, since April of 1996, Defendants have effectively blocked her from completing her first masters degree in accounting and computer information systems. She has sued Defendants Gibson, Maier, Curry and Walker in both their individual and official capacities.

Defendants Gibson, Maier, Curry and Walker have moved to dismiss the claims against them in their official capacities as barred by the Eleventh Amendment and to

dismiss the claims against them in their individual capacities because they contend they cannot be held liable as individuals under the ADA. Alternatively, these Defendants move for a stay of these proceedings pending the disposition of the appeal of their Co-Defendant Middle Tennessee State University ("MTSU") of this Court's earlier ruling that the Eleventh Amendment does not bar Plaintiff's ADA claim against MTSU.

In their official capacities, the individual Defendants are treated as their Co-Defendant, MTSU. Thus, for the reasons stated in this Court's ruling on MTSU's Motion to Dismiss (*see* Docket Nos. 19 and 20), Defendants' Motion to Dismiss claims against them in their official capacities is DENIED. In light of this Court's earlier Order (Docket No. 27) on Defendant MTSU's Motion to Stay, Defendants' Alternative Motion to Stay is also DENIED.

With regard to the individual Defendants in their individual capacities, Defendants cite this Court to employment cases only. Plaintiff is not an employee of Defendants. Plaintiff's claim is based upon the "public accommodation" portion of the ADA, which provides: "No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation." 42 U.S.C. § 12182(a).

Under this portion of the ADA, an individual may be liable as the operator of a public accommodation where (a) he or she is in a position of authority; (b) within the ambit of this authority he or she has both the power and discretion to perform potentially discriminatory acts; and (c) the

discriminatory acts are the result of the exercise of the individual's own discretion, as opposed to the implementation of institutional policy or the mandates of superiors. *Howe v. Hull*, 874 F.Supp. 779, 787-88 (N.D. Ohio 1994); *see also Guckenberger v. Boston Univ.*, 957 F.Supp. 306, 322 (D. Mass. 1997); *United States v. Morvant*, 843 F.Supp. 1092, 1094 (E.D. La. 1994); *Bowers v. National Collegiate Athletic Ass'n*, 9 F.Supp. 2d 460, 484-85 (D. N.J. 1998); *but see Coddington v. Adelphi Univ.*, 45 F.Supp. 2d 211 (E.D. N.Y. 1999).

On a motion to dismiss, the Court must accept the factual allegations of the Complaint as true. Because there is no proof before the Court as to whether these individual Defendants are persons who "operate a place of public accommodation," the Defendants' Motion to Dismiss claims against them in their individual capacities (Docket No. 37) is also DENIED.

IT IS SO ORDERED.

/s/ Todd Campbell
TODD J. CAMPBELL
UNITED STATES
DISTRICT JUDGE

This document was entered on
the docket in compliance with
Rule 58 and/or Rule 79(a).

FRCP, on 8/18/99 By lah

APPENDIX H

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE

LORI PARR,	)	
	)	
v.	)	NO. 3:98-0865
	)	JUDGE CAMPBELL
MIDDLE TENNESSEE	)	
STATE UNIVERSITY	)	

ORDER

Pending before the Court is Defendants' Motion to Dismiss or, Alternatively, to Stay (Docket No.37). For the reasons stated in the accompanying Memorandum, Defendants' Motion is DENIED.

IT IS SO ORDERED.

/s/ Todd Campbell
TODD J. CAMPBELL
UNITED STATES
DISTRICT JUDGE

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the docket in compliance with
Rule 58 and/or Rule 79(a).

FRCP, on 8/18/99 By lah

APPENDIX I

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

LORI ANN PARR Plaintiff	)	
vs.	)	Civil Action No. 3-98 0865
MIDDLE TENNESSEE STATE UNIVERSITY (Including its Department of Accounting and Computer Information Systems (ACIS), Its College of Business, Its Administration, (and employees, agents, and representatives therein) Defendants.	)	(JUDGE JUDGE CAMPBELL) (Magistrate/Judge) JURY DEMAND

COMPLAINT

(Filed Sep. 18, 1998)

I. INTRODUCTION

1. Comes now the Plaintiff before this Honorable Court, and would show that the Defendants have discriminated against the Plaintiff, on the basis of her disability, in its administration of educational policies and procedures, and in its acts and omissions of acts, by allowing certain individuals in the University to engage in a long-term pattern of discrimination, retaliation, and abuse of and against the Plaintiff (and her husband), in the Plaintiff's pursuit of her Masters Degree in Accounting and Computer

Information Systems (ACIS), creating an increasingly hostile, threatening, and discriminating environment since October of 1994, with the final discriminatory act alleged in this Complaint occurring on January 8, 1998, with the intent of these discriminatory and retaliatory acts by the Defendants being to a) deprive the Plaintiff of her masters degree of which all that has remained for the Plaintiff to complete her degree is one course, and the comprehensive examination requirement, since January of 1996, b) to deprive the Plaintiff of numerous civil rights, including the right to equal access to educational opportunities, 3) to inflict pain and suffering upon her, 4) to punish the Plaintiff for filing complaints about their mistreatment of her, and 5) to punish the Plaintiff for seeking legal protection from their mistreatment of her. The acts of the Defendants since 1994 have worked collusively together to make the attainment of the Plaintiff's masters degree in Accounting and Computer Information Systems far more difficult than for non-disabled students, requiring her to not only meet the rigorous demands of the masters program itself, but to accomplish these demands in an environment of hostility, abuse, harassment, threats, intimidation, coercion, retaliation, and discrimination because she filed a complaint against the ACIS department in 1994.

II. JURISDICTION AND VENUE

2. This is an action for declaratory relief, injunction, and damages to redress the deprivation of rights reserved to the Plaintiff under the Americans With Disabilities Act; U.S.C. 42, Chapter 126, Section 12101 to 12213; U.S.C. 42, Chapter 21, Section 1981 to 2000h-6; and any and all other applicable federal and/or constitutional laws. The

Plaintiff further seeks compensatory and punitive damages, make whole relief, costs and attorney fees including discretionary costs for the unlawful discrimination suffered by the Plaintiff.

3. Jurisdiction over the Plaintiff's claims are invoked pursuant to U.S.C. 28 at 1331, which states "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States". U.S.C. 28 at 1331

4. Venue for this action properly lies in the United States District Court for the Middle District of Tennessee at Nashville because all of the acts complained of arose in this judicial district.

III. The Parties

5. Plaintiff, Lori Ann Parr, is an adult female citizen of the United States, who is a resident of Rutherford county, and whose address is P.O. Box 2262, Murfreesboro, TN 37133. The Plaintiff is currently enrolled at Middle Tennessee State University in the graduate program of the Criminal Justice Administration department, working on a second masters degree, since she has been effectively blocked by the acts of the Defendants from completing her first masters degree in Accounting and Computer Information Systems since April of 1996. The Plaintiff is a documented disabled student with the university's Disabled Student Services, and has been so documented since 1993. The Plaintiff was provided with the accommodations of extra time, and the use of tape recorders, if necessary. The Plaintiff has two registered disabilities, namely, 1) Conversion Disorder, a rare non-epileptic seizure disorder which can cause the Plaintiff to black-out and become

unconscious under excessive levels of stress, among other symptoms, and 2) carpal and cubital tunnel syndrome in both wrists and both elbows, respectively, which makes it difficult and painful for the Plaintiff to engage in long-term handwriting or typewriting.

6. Defendant Middle Tennessee State University, is a state university which receives federal funding, and is therefore required to comply with the Americans With Disability Act in its educational policies and procedures, and other laws as indicated above in paragraph (II)(2), above. The university is represented through its employees, as well as through its Department of Accounting and Computer Information Systems, its College of Business, its Administration, and employees, agents, and representatives therein.

IV. FACTUAL ALLEGATIONS

7. In the Summer of 1993, the Plaintiff entered the graduate program of Middle Tennessee State University, and in the Fall of 1993, the Plaintiff entered the graduate program of the Department of Accounting and Computer Information Systems (ACIS). In October of 1994, the Plaintiff presented her accommodation form to Dr. William Jeffrey Clark, requesting additional time to complete an assignment. Dr. William Jeffrey Clark denied the Plaintiff her accommodation. The Plaintiff was subsequently treated in the emergency room at Vanderbilt University Medical Center, due in part to her attempts to complete the assignment without the accommodation. As a result of the denial of the accommodation, and subsequent consequences, the Plaintiff was forced to withdraw from the class. Subsequently, the Plaintiff filed a formal letter of

complaint with the Disability Office, with copy to the President of the University.

8. After filing her written complaint with the Disability Office, and the President's Office, the Plaintiff began to experience repeated discriminatory and retaliatory acts against her from various members of the ACIS Department, the College of Business, and the Administration of the University, during the remainder of her tenure in the ACIS department, and on through January 8, 1998. The discriminatory and retaliatory acts committed against the Plaintiff include, but are not limited to, the following acts listed in *Parts A.: Discriminatory/Retaliatory Acts That Occurred Prior To The One-Year Statute (Predicate Acts),* and, *B. Discriminatory Acts That Occurred Within The One-Year Statute,* as follows [all acts occurred after the Plaintiff filed her disability-related letter of complaint in 1994]:

A. Discriminatory/Retaliatory Acts That Occurred Prior To The One-Year Statute

(Predicate Acts)

a.) The Plaintiff had ordered equipment for a class presentation. Immediately before the presentation, when she came to pick up the equipment, the Plaintiff was told that the equipment was locked up in the office of Dr. Carol Clark, the wife of Dr. William Jeffrey Clark, with the message to be relayed to the Plaintiff that she "needed to learn how to go through proper channels". The Plaintiff had to proceed with her presentation without the equipment, embarrassing her in front of her co-presenters, the class, and the instructor.

b.) The Plaintiff was denied an interview for a graduate assistantship in the ACIS department even though she had filed all necessary documents for her application for a graduate assistantship, and even though the Plaintiff was as or more qualified for the position than those who were hired. The Plaintiff was a United States citizen, and was not even interviewed, even though other graduate students who were not United States citizens, and had less qualifications, were interviewed, and subsequently hired for the same position the Plaintiff applied for.

c.) The Plaintiff was forced – when she was nine months pregnant and three days away from giving birth to her third son – to take a difficult test in a small, unventilated supply closet, in a desk/chair that was so small that the Plaintiff had to sit sideways to fit in the chair.

d). The University allowed Dr. William Jeffrey Clark to come into the supply closet while the Plaintiff was taking the test mentioned in paragraph 12(c), and close the door so that he and the Plaintiff were alone in the small supply closet, where Dr. William Jeffrey Clark then proceeded to assault the Plaintiff, while she was nine-months pregnant, by stepping on her foot, and putting the weight of his body on her foot while he reached above the Plaintiff pretending to get something above her, sticking his stomach and then his crotch into her face, and then allowing his crotch to remain in the Plaintiff's face for an extended period of time, essentially trapping the Plaintiff by leaning his body against her and stepping on her foot, and frightening her to the point that it caused physical distress to her unborn child, and caused the onset of the symptoms of the Plaintiff's conversion disorder.

e.) Discriminating against the Plaintiff in the grading practices of the comprehensive examination question, by failing the Plaintiff's answer on a comprehensive examination question, by falsely stating that the Plaintiff's answere [sic] was "too short" even though it was almost two pages long, and the same identical question of another student at the same comprehensive examination was passed even though that student's answer was less than one-half page in length.

f.) Denying the student the right to have the professor who was supposed to grade the Plaintiffs comprehensive examination question review the question to examine whether it had been graded in a discriminatory manner.

g.) Grading the Plaintiff's husband in a retaliatory fashion, causing him to leave the ACIS department, and change majors because of the retaliatory grading, and fear of future retaliatory grading.

h.) Denying the Plaintiff's right to have a copy of her educational record.

i.) Denying the Plaintiff the right to have a written copy of the comprehensive examination grading policy, and other policies, and procedures related to the comprehensive examination.

j.) Denying the Plaintiff the right to have written university definitions of the Appeals Handout in order to have proper definitions for the submission of her appeal of her comprehensive examination grade to the Graduate Council.

k) Denying the Plaintiff the right to have a written explanation for the failing of the Plaintiff's comprehensive examination question.

l) Denying the Plaintiff the name of who authored the Appeals Handout, to request definitions from that person in preparation for the submission of her appeal of her comprehensive examination grade to the Graduate Council, after she was denied the definitions from the Graduate Office.

m) Denying the Plaintiff right to interview other students who took the comprehensive exam in preparation for the submission of her appeal of her comprehensive examination grade to the Graduate Council.

l). Denying the Plaintiff proper administrative support and assistance in attaining the above-mentioned information in preparation for the submission of her appeal of her comprehensive examination grade to the Graduate Council.

m.) Violating the Plaintiff's right to privacy under federal law *[U.S.C. 42-2000aa.]* by accessing her student e-mail account, without a warrant, and without her permission.

n.) Motivating a fellow student in the ACIS department to call the Plaintiff at her home, and threaten her with the destruction of her career if she filed a legal action against the University.

o.) Libeling, ridiculing, humiliating, and harming the Plaintiff's professional reputation by the official issuance of a formal letter from a high-ranking university member to several upper-administration personnel – including the head of the affirmative action office – in which the letter falsely stated that there were no records of the Plaintiff's conversion disorder in the Disability Office – nor accomodations [sic] for such – when there were records of the

Plaintiff's conversion disorder in the Disability Office, and had been since 1994.

p.) Denying the Plaintiff the right to a course substitution at Tennessee State University for QM 677, when such a substitution had been offered to a fellow student.

q.) Denying the Plaintiff the right to a list of course substitutions, even though such substitutions had been offered to fellow students.

r.) Denying the Plaintiff proper help from the Women's Center, the Affirmative Action Office, and the Administration, from the abuse, discrimination, and retaliatory acts being inflicted upon the Plaintiff and her husband.

B. Discriminatory Acts That Occurred Within The One-Year Statute

a) By summer of 1997, it was clear to the Plaintiff that she would receive no supportive materials to present with her appeal to the Graduate Council, and that the University – through certain employees, agents, and representatives therein – was deliberately attempting to handicap the student in her appeal of her comprehensive examination grade by preventing her access to such supportive materials for her defense, as further punishment for complaining about the mistreatment she had received in the ACIS graduate department. Consequently, the Plaintiff was forced to submit an appeal to the Graduate Council without any substantial evidence, thereby forcing the entire appeal on a credibility battle between the Plaintiff [whose professional reputation had already been damaged by the false statements made about her as referenced in paragraph *A.q.]* – and three high-ranking university

personnel, namely, 1) Dr. Dwight Bullard [Associate Dean, College of Business], 2) Dr. Michael Gibson [Chairman of the ACIS Department], and 3) Dr. Donald Curry [Dean of Graduate Studies]. This was clearly a losing battle for the Plaintiff since her health was now failing, and because the University had clearly constructed a powerfully persuasive position for itself by not only degrading the Plaintiff's professional reputation and credibility, but also by effectively tying her hands behind her back and stuffing an evidentiary gag in her mouth – through its denial of supportive materials to the Plaintiff – before she approached the Graduate Council with her appeal. Predictably, on September 23, 1997, the Graduate Council issued a memorandum denying the Plaintiff's appeal.

b) In desperation to save her masters degree, on October 8, 1997, the Plaintiff requested course substitutions at Tennessee State University to complete the final two requirements for her masters degree from the ACIS department chairman. On October 10, 1997, the request was denied by Dr. Michael Gibson.

c.) On October 28, 1997, the Plaintiff requested from the ACIS department chairman that she be able to view her comprehensive examination in a non-threatening environment. On October 31, 1997, the request was denied by Dr. Michael Gibson.

d.) In October 1997, a second request was sent by the Plaintiff to the ACIS department for a written explanation of her grade on the comprehensive examination. The request was never answered by Dr. Maier.

e.) Then, on November 4, 1997, the Plaintiff received from Dr. Donald Curry, the Graduate Dean, copies of educational records that she had requested from him.

From these copies – and an accompanying letter – the Plaintiff discovered that Dr. Donald Curry had submitted a letter he had written to the Plaintiff – in which he falsely stated that the majority of Plaintiff's appeal was based on academic judgment, a non-appealable basis – to the Graduate Council. Such a submission to the Graduate Council of this letter not only breached the Plaintiff's privacy rights, but also constituted serious discrimination against the Plaintiff since it is a violation of policy for the Dean of Graduate Studies to influence the Graduate Council on such a matter. The submission of this letter to the Graduate Council – without the Plaintiff's knowledge or her permission – along with a letter from Dr. Bullard [the Associate Dean and Director of Graduate Studies; College of Business], and a letter from Dr. Michael Gibson [Chairman of the ACIS Department], each letter degrading the Plaintiff's appeal, acted collusively to seriously discriminate against the Plaintiff by improperly biasing, prejudicing, and negatively influencing the Graduate Council against the Plaintiff, by the powerfully collusive suggestion of three high-ranking university members that the Plaintiff's appeal had no merit, and that her appeal should be denied, of which it was then denied by the Graduate Council.

f.) Additionally, in his letter submitted to the Graduate Council, Dr. Michael Gibson, the Chairman of the ACIS Department, seriously misled the Graduate Council by stating to them in writing that he obviously had the authority to determine if the Plaintiff's failing grade on Dr. Remington's portion of the comprehensive examination was discriminatory or not, since Dr. Remington had been one of his students at the University of North Texas *[paraphrased].* The Plaintiff spoke to Dr. Remington after

Dr. Gibson made this statement to the Graduate Council, and Dr. Remington told the plaintiff that he had never been a student in Dr. Gibson's classes at the University of North Texas, or anywhere else.

g.) Additionally, Dr. Dwight Bullard, Associate Dean and Director of Graduate Studies, College of Business, is a good friend of the student in the ACIS department who called the Plaintiff and threatened her that members of the ACIS department would destroy her career if she filed a legal action against the university, as indicated in paragraph *(A.)(m)*, above.

h.) Finally, on January 8, 1998 – after requesting a copy of her comprehensive examination in preparation for legal action since the six-year matriculation period of the Plaintiff's masters degree in ACIS was approaching its ending in August 1999 – the plaintiff was again denied a copy of her comprehensive examination [an educational record] by Dr. Michael Gibson, Chairman of the ACIS Department.

V. CAUSES OF ACTION

9. The Defendants have engaged in a long-term pattern of unlawful discriminatory and retaliatory acts, ommissions [sic] of acts, practices, policies, and procedures against the Plaintiff because of the Plaintiff's disability, and disability-related complaints, in violation of the Americans With Disabilities Act; U.S.C. 42, Chapter 126, Section 12101 to 12213; U.S.C. 42, Chapter 21, Section 1981 to 2000h-6; and any and all other applicable federal and/or constitutional laws, as listed in paragraph (II.)(2) of this Complaint. These acts have constituted a deprivation of the Plaintiff's federally protected rights, as previously

documented in this Complaint. Therefore, the Defendants are liable to the Plaintiff for punitive and compensatory damages in an amount to be determined at trial.

VI. PRAYERS FOR RELIEF

WHEREFORE, the Plaintiff prays that this court empanel a jury, to hear this case, and that the Plaintiff be awarded the following:

1. Make whole relief by way of granting the Plaintiff her masters degree in Accounting and Computer Information Systems, along with the two years of salary at a comparable state job for a person with such a masters in Summer of 1996, or some alternate remedy deemed by the Court, along with the Plaintiff's attorney fees, costs, and discretionary costs.

2. That the Plaintiff be granted injuncture relief enjoining the Defendants from engaging in the practices of discrimination and/or retaliatory acts, ommissions [sic] of acts, policies, procedures, and practices toward disabled students, including the Plaintiff. Also, that the Court retain jurisdiction over this action to assure compliance with the orders of this Court and require the Defendants to file such reports as the Court deems necessary to evaluate such compliance with the orders of this Court.

3. That the Plaintiff be awarded compensatory damages and punitive damages in an amount to be established at trial for the Plaintiff.

4. That the Plaintiff be awarded attorney fees and costs [including *pro se,* if applicable], in an amount to be determined by the Court pursuant to applicable law. And further, that the Plaintiff be awarded all costs, fees and

incidental expenses of litigation, including discretionary costs.

5. That the Plaintiff be awarded such other and further relief that the Court deems just and proper.

Sworn and affirmed. All statements made upon information and belief.

Respectfully submitted,

/s/ Lori Ann Parr
Lori Ann Parr, pro se
P.O. Box 2262
Murfreesboro, TN 37133
(615) 893-4873

I swear and affirm that a copy of this COMPLAINT has been delivered by certified mail, to the President James Walker, President's Office, Middle Tennessee State University, Murfreesboro, Tennessee, 37132; and to the Office of the Attorney General, Civil Litigation and State Services Division, Cordell Hull Building, Second Floor, 425 Fifth Avenue North, Nasvhille [sic], TN 37243-0490, certification numbers _____, and _____, respectively, with Return Receipt Requested.

/s/ Lori Ann Parr
Lori Ann Parr

Note: Additionally served upon Dr. Michael Gibson, Dr. J. Maier, Dr. Donald Curry, Middle Tennessee State University, Murfreesboro, TN 37132.

APPENDIX J

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE

LORI PARR PLAINTIFF V. MIDDLE TENNESSEE STATE UNIVERSITY DEFENDANT, AND DR. MICHAEL GIBSON, DR. J. MAIER, DR. DONALD CURRY, AND DR. JAMES WALKER DEFENDANTS, (INDIVIDUALLY AND IN THEIR OFFICIAL CAPACITY)	NO. 3:98-0865 JUDGE CAMPBELL

MOTION TO AMEND

Comes now the plaintiff before this Honorable Court, and would ask that her Complaint be amended, to reflect and to clarify that the plaintiff is suing defendants Dr. Michael Gibson, Dr. J. Maier, Dr. Donald Curry, and Dr. James Walker in both their individual and official capacity as employees of Middle Tennessee State University.

Sworn and affirmed. All statements made upon information and belief.

Respectfully submitted,

/s/ Lori Parr

Lori Parr
1784 West Northfield
Blvd. #267
Murfreesboro, TN 37129
615-893-4873

I swear and affirm that a copy of this Motion To Amend was mailed to Ms. Mary Collier, 425 Fifth Avenue North, Cordell Hull Building, Second Floor, Nashville, Tenn. 37243-0490, Dr. Michael Gibson, Dept. Of Accounting and Information Systems, MTSU, Murfreesboro, TN 37132, Dr. J. Maier, Dept. Of Accounting and Information Systems, MTSU, Murfreesboro, TN 37132, Dr. Donald Curry, Graduate Office, MTSU, Murfreesboro, TN 37132, and Dr. James Walker, President's Office, MTSU, Murfreesoboro, TN 37132, this 225 day of January, 1999.

/s/ Lori Parr
Lori Parr

APPENDIX K

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE

LORI PARR	)	
	)	
v.	)	NO. 3:98-0865
MIDDLE TENNESSEE STATE UNIVERSITY	)	JUDGE CAMPBELL
	)	

ORDER

Pending before the Court are a Report and Recommendation of the Magistrate Judge dated January 22, 1999 (Docket No. 30) and Plaintiff's objections thereto (Docket No. 35). The Court has reviewed the Magistrate Judge's findings, the objections, and the record.

The Magistrate Judge has resolved Plaintiff's issue related to documents. *See* Docket Nos. 30 and 33. Plaintiff also seeks injunctive relief against a non-party for alleged harm which may occur in the summer of 1999. Plaintiff has failed to establish the elements required for injunctive relief. *See* Fed. R. Civ. P. 65. The Plaintiff's objections are OVERRULED, and the Report and Recommendation is ADOPTED and APPROVED. Accordingly, Plaintiff's Motion for Injunction (Docket No. 17), so far as it relates to Professor William Jeffrey Clark, is DENIED.

Also pending before the Court is Plaintiff's Motion to Amend (Docket No. 32). Plaintiff's requested amendment is consistent with the Court's reading of the

Complaint and, therefore, Plaintiff's Motion to Amend (Docket No. 32) is GRANTED.

IT IS SO ORDERED.

/s/ Todd J. Campbell
TODD J. CAMPBELL
UNITED STATES
DISTRICT JUDGE

This document was entered on the docket in compliance with Rule 58 and/or Rule 79(a)

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APPENDIX L

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

LORI ANN PARR Plaintiff vs. MIDDLE TENNESSEE STATE UNIVERSITY, and Dr. C. Nathan Adams, in his official and individual capacities COLLECTIVELY AND INDIVIDUALLY Defendants	) Civil Action No. 3-00 0398) JUDGE JUDGE ECHOLS) Magistrate

COMPLAINT

(Filed Apr. 26, 2000)

I. INTRODUCTION

1. Comes now the Plaintiff before this Honorable Court, and would show that the Defendants have discriminated and retaliated against the Plaintiff, on the basis of her disability, in its administration of educational policies and procedures, and in its acts and omissions of acts, and by allowing Dr. C. Nathan Adams to engage in a long-term pattern of discrimination against the plaintiff, and to engage in retaliation against the plaintiff for filing complaints against Dr. C. Nathan Adams and the Department

of Accounting and Computer Information Systems (hereinfter "ACIS Department") while plaintiff has been a graduate student at the defendant Middle Tennessee State University, including, but not limited to, the plaintiff's filing of a federal Complaint against the University and the ACIS Department (Federal Complaint, 3:98-0865, *Parr v. Middle Tennessee State University, et al*) in the Plaintiff's pursuit of her Masters Degree in Accounting and Computer Information Systems (ACIS), creating an increasingly hostile, threatening, and discriminating environment since October of 1994, with the discriminatory and retaliatory acts and omissions of acts alleged in this Complaint occurring on or before the filing date of this Complaint, and within applicable statutes of limitations, with the intent of these discriminatory and retaliatory acts and omissions of acts by the Defendants being to a) deprive the Plaintiff of her masters degree of which all that has remained for the Plaintiff to complete her degree is one course, and the comprehensive examination requirement, since January of 1996, b) to deprive the Plaintiff of numerous civil rights, including the right to equal access to educational opportunities, 3) to inflict pain and suffering upon her, 4) to punish the Plaintiff for filing complaints about their mistreatment of her, and 5) to punish the Plaintiff for seeking legal protection from their mistreatment of her. The acts and omissions of acts of this Complaint against the Defendants, and predicate acts and omissions of acts against the plaintiff since 1994, have worked collusively together to make the attainment of the Plaintiff's masters degree in Accounting and Computer Information Systems far more difficult than for non-disabled students, requiring her to not only meet the rigorous demands of the masters program itself, but to accomplish these demands in an environment of hostility,

abuse, harassment, intimidation, retaliation, and discrimination because she has filed a complaint in this United States District Court against the Defendant Middle Tennessee State University, and against the ACIS Department, and because she filed other complaints against the defendants at the defendant Middle Tennessee State University, and against defendant Adams.

II. JURISDICTION AND VENUE

2. This is an action for declaratory relief, injunction, and damages to redress the deprivation of rights reserved to the Plaintiff under the Americans With Disabilities Act: U.S.C. 42, Chapter 126, Section 12101 to 12213; U.S.C. 42, Chapter 21, Section 1981 to 2000h-6; and any and all other applicable federal and/or constitutional laws. The Plaintiff further seeks compensatory and punitive damages, make whole relief, costs and attorney fees including discretionary costs for the unlawful discrimination and retaliation suffered by the Plaintiff.

3. Jurisdiction over the Plaintiff's claims are invoked pursuant to U.S.C. 28 at 1331, which states "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States". U.S.C. 28 at 1331

4. Venue for this action properly lies in the United States District Court for the Middle District of Tennessee at Nashville because all of the acts complained of arose in this judicial district.

III. The Parties

5. Plaintiff, Lori Ann Parr, is an adult female citizen of the United States, who is a resident of Rutherford county,

and whose address is 825 South Church St., #2262, Murfreesboro, TN 37130. The Plaintiff is currently enrolled at Middle Tennessee State University in the graduate program of the Criminal Justice Administration department, working on a second masters degree, since she has been effectively blocked by the acts of the Defendants from completing her first masters degree in Accounting and Computer Information Systems since April of 1996. The Plaintiff is a documented disabled student with the university's Disabled Student Services, and has been so documented since 1993. The Plaintiff was provided with the accommodations of extra time, and the use of tape recorders, if necessary. The Plaintiff has two registered disabilities, namely, 1) Conversion Disorder, a rare non-epileptic seizure disorder which can cause the Plaintiff to black-out and become unconscious under excessive levels of stress, among other symptoms, and 2) carpal and cubital tunnel syndrome in both wrists and both elbows, respectively, which makes it difficult and painful for the Plaintiff to engage in long-term handwriting or typewriting.

6. Defendant Middle Tennessee State University is a state university which receives federal funding, and is therefore required to comply with the Americans With Disability [sic] Act in its educational policies and procedures, and other laws as indicated above in paragraph (II)(2), above. The university is represented through its employee, Dr. C. Nathan Adams.

IV. FACTUAL ALLEGATIONS

7. Plaintiff herein adopts by reference, her Complaint filed in 1998 in this United States District Court, Docket

No. 3:98-0865, *Parr v. Middle Tennessee State University, et al., (Attached, Exhibit 1).*

8. Plaintiff filed a federal Complaint in the United States District Court, Middle District, in 1998, as referenced in part 7, above. In plaintiff's Complaint, plaintiff asked the Court to grant to plaintiff "[i]njuncture [sic] relief enjoining the Defendants from engaging in the practices of discrimination and/or retaliatory acts, omissions of acts, policies, procedures, and practices toward disabled students, including the Plaintiff." *(page 11, Exhibit 1, Parr v. Middle Tennessee State University, 3:98-0865)*

9. Plaintiff, believing that the Defendants would no longer engage in discriminatory and retaliatory acts against her, enrolled in the Spring semester 1999 graduate class – Quantitative Methods 677 – which was taught by the defendant, C. Nathan Adams, acting as an employee of the defendant, Middle Tennessee State University.

10. While the plaintiff was enrolled in the class, defendant Adams engaged in the following discriminatory and retaliatory acts against the plaintiff, as follows:

a. Deducting more points off of the plaintiff's errors on tests and assignments than for other graduate students in QM 677, similarly situated, causing the plaintiff to have a lower grade than she had truly earned.

b. Retaliating against the plaintiff in his grading of the plaintiff because the plaintiff gave defendant Adams poor marks on his teacher evaluation, which was supposed to be confidential, but of which he read.

c. Allowing and engaging in a long-term discriminatory testing policy and procedure in defendant

Adam's [sic] Quantitative Methods 677 (hereinafter "QM 677") class, whereby the defendant Adams allowed students to bring in old tests, from as many years back as possible, to be brought in by students during active tests so that they could simply copy the answers from the old tests directly on to the active tests, whereby the plaintiff – who because of her disability has not been able to socialize to the degree necessary to secure copies of all of the old tests– has been forced to work the test problems out by calculation, rather than by simply copying the answers to the active test from copies of the old tests. This testing policy has continuously put the plaintiff at a distinct disadvantage, caused a severe discrimination against her in her ability to compete fairly in this educational and academic environment, and rendered success in the defendant Adam's [sic] QM 677 graduate class to be based not on the plaintiff's competitive educational academic ability, but rather on her socializing skills, which have been severely limited because of her seizure disorder.

d. Not allowing the plaintiff the same amount of time for test taking, as defendant Adams had for other semesters, for the same scheduled test given in other semesters, for other graduate students similarly situated.

e. Obstructing the plaintiff's right to a fair hearing before the Grade Appeals Committee by refusing to provide plaintiff with the necessary documentation for the plaintiff to show the Grade Appeals Committee how the defendant Adams had discriminated and retaliated against her in his grading.

f. Improperly manipulating the curve to cause the plaintiff to have a lower grade than she had truly earned.

g. Violating the plaintiff's petition to the United States District Court to cease "[f]rom engaging in the practices of discrimination and/or retaliatory acts, omissions of acts, policies, procedures, and practices toward disabled students, including the Plaintiff". *(page 11, Exhibit 1, Parr v. Middle Tennessee State University, 3:98-0865)*

h. Causing the plaintiff to earn a failing grade in a class that she had earned a passing grade in, by the above-cited discriminatory and retaliatory acts, and omissions of acts.

i. And other retaliatory and discriminatory acts, which include, but are not limited to:

1) Making false statements to the Vice-President of Academic Affairs during her investigation of plaintiff's complaints against the ACIS department in 1997 to discredit the plaintiff to the Vice-President of Academic Affairs, 2) Denying the plaintiff an interview for a graduate assistantship, 3) Placing the plaintiff, when she was nine months pregnant, in an [sic] small, unventilated supply closet, in a chair so small she had to sit sideways in the chair because of her advanced pregnancy, to take a very difficult graduate level test.

V. CAUSES OF ACTION

9. The Defendants have engaged in a long-term pattern of unlawful discriminatory and retaliatory acts, omissions of acts, practices, policies, and procedures against the Plaintiff because of the Plaintiff's disability, and disability-related

complaints, in violation of the Americans With Disabilities Act; U.S.C. 42, Chapter 126, Section 12101 to 12213; U.S.C. 42, Chapter 21, Section 1981 to 2000h-6; and any and all other applicable federal and/or constitutional laws, as listed in paragraph (II.)(2) of this Complaint. These acts have constituted a deprivation of the Plaintiff's federally protected rights, as previously documented in this Complaint. Therefore, the Defendants are liable to the Plaintiff for punitive and compensatory damages in an amount to be determined at trial.

VI. PRAYERS FOR RELIEF

WHEREFORE, the plaintiff prays that this court empanel a jury, to hear this case, and that the plaintiff be awarded the following:

1. Make whole relief by way of granting the Plaintiff the passing grade in Quantitative Methods 677 that she earned and/or would have earned if the defendants had not engaged in discriminatory and retaliatory acts and omissions of acts against her, as described above.

2. That the Plaintiff be granted injuncture [sic] relief enjoining the Defendants from engaging in the practices of discrimination and/or retaliatory acts, omissions of acts, policies, procedures, and practices toward disabled students, including the Plaintiff. Also, that the Court retain jurisdiction over this action to assure compliance with the orders of this Court and require the Defendants to file such reports as the Court deems necessary to evaluate such compliance with the orders of this Court. Also that the Court punish the defendants with sanctions and/or other punishments for their continuing to engage in these practices of discrimination and retaliation against the

plaintiff after the plaintiff petitioned the Court to have them cease such practices of discrimination and retaliation against the plaintiff.

3. That the Plaintiff be awarded compensatory damages and punitive damages in an amount to be established at trial for the Plaintiff.

4. That the Plaintiff be awarded attorney fees and costs in an amount to be determined by the Court pursuant to applicable law. And further, that the Plaintiff be awarded all costs, fees and incidental expenses of litigation, including discretionary costs.

5. That the Plaintiff be awarded such other and further relief that the Court deems just and proper.

Respectfully submitted,

/s/ Lori Ann Parr
Lori Ann Parr
825 South Church St.
#2262
Murfreesboro, TN 37130
(615)893-4873

APPENDIX M

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

LORI ANN PARKER-PARR, Plaintiff, v. MIDDLE TENNESSEE STATE UNIVERSITY, et al., Defendants.	)	No. 3:00-0398 Judge Echols/Brown

TO: The Honorable Robert L. Echols

REPORT AND RECOMMENDATION

For the reasons stated below, the Magistrate Judge **recommends** that that portion of the plaintiff's complaint which alleges discrimination, due to the fact that Professor Adams discriminated and/or retaliated against the plaintiff by giving the plaintiff an examination which was substantially identical to the examinations he had given in prior years, be **dismissed** as frivolous. The Magistrate Judge further **recommends** the case be **consolidated** with the earlier case filed by the Plaintiff involving the same general subject matter.

I. INTRODUCTION

The plaintiff, Lori Ann Parker-Parr, presently has another case pending against M.T.S.U. and various of its faculty members involving allegations of discrimination

due to her disabilities which is assigned to Judge William J. Haynes, Jr. *Parr v. M.T.S.U., et al.*, Case No. 3:98-0865. Those proceedings have been stayed pending a decision by the Sixth Circuit on certain immunity issues. Plaintiff is proceeding *in forma pauperis* in both cases.

Although not named as a defendant in that case, the plaintiff asserts various discriminatory actions by the defendant Adams in the present case and incorporates by reference her complaint in the 1998 case (Docket Entry No. 1 at page 5, ¶ 7).

By separate Order, the Magistrate Judge has found her allegations of retaliation by the defendant Adams for her prior complaints regarding improper grading of an examination not to be frivolous and directed service of process.

II. LEGAL DISCUSSION

In the present complaint, the plaintiff alleges that Dr. Adams retaliated and discriminated against her by using examinations which he had used in prior years and by allowing less time for completion of the examination than in prior years.

During the course of the case management conference, the Magistrate Judge tried to understand the plaintiff's complaint. She admitted that all students were given the same amount of time to complete the examination and that she knew the professor recycled his examinations. When asked, the plaintiff explained that she was uncomfortable asking other students if they had copies of earlier examinations.

While it is not the issue at hand, the Magistrate Judge is somewhat amazed and disappointed that a professor in a university of higher learning would simply reuse old examinations.

The complaint does not allege that the professor knew the plaintiff would be unable to obtain copies of his prior examinations or that the time limits placed on the examination were not applied equally to all the students. The fact that the plaintiff was unable to finish the exam because she did not obtain a copy of an old exam does not support a charge of retaliation or discrimination inasmuch as there is no evidence that the professor knew that she would not be able to obtain other examinations and be as well prepared as the other three students who took the course. The Magistrate Judge further notes that the documents provided by the plaintiff evidence the fact that the plaintiff did not make the lowest score on the exam in question.

Accordingly, the Magistrate Judge is unable to find any possible basis for discrimination or retaliation with regard to the use of old examinations or the time allowed for completion.

Since the allegations in this complaint appear to be an outgrowth of the earlier complaint which has been incorporated by reference, the Magistrate Judge believes consolidation of the two cases is appropriate.

III. RECOMMENDATION

For the reasons stated above, the Magistrate Judge **recommends** that that portion of the complaint dealing with the use of recycled examinations and a shortened

time frame be **dismissed** as frivolous and that an appeal therefrom would not be taken in good faith. The Magistrate Judge also **recommends** this case be **consolidated** with the earlier case of *Parr v. M.T.S.U., et al.*, Case No. 3:98-0865.

Under rule 72(b) of the Federal Rules of Civil Procedure, any party has ten (10) days from receipt of this Report and Recommendation in which to file any written objections to this Recommendation, with the District Court. Any party opposing said objections shall have ten (10) days from receipt of any objections filed in this Report in which to file any responses to said objections. Failure to file specific objections within ten (10) days of receipt of this Report and Recommendation can constitute a waiver of further appeal of this Recommendation. *Thomas v. Arn*, 474 U.S. 140, 106 S.Ct. 466, 88 L.Ed.2d 435 (1985), *reh'g denied*, 474 U.S. 1111 (1986).

ENTERED this 12 of July 2000.

/s/ Joe B. Brown
JOE B. BROWN
United States Magistrate Judge

This document was entered on the docket in compliance with Rule 58 and/or Rule 79(a) FRCP on 7/12/00 By: LCH

APPENDIX N

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

LORI ANN PARKER-PARR	)	
vs.	)	**Civil Action No. 3:00-0398**
MIDDLE TENNESSEE STATE UNIVERSITY, ET AL	)	**Judge Robert L. Echols**

ORDER

No objections to the Magistrate Judge's Report and Recommendation (entered July 12, 2000; Document Entry No. 8) have been filed within the required time. After independently reviewing the Magistrate Judge's findings and the entire record, the Court finds the magistrate Judge's findings and conclusion are correct and they are adopted and approved.

Accordingly, that portion of the complaint dealing with the use of recycled examinations and a shortened time frame is hereby DISMISSED as frivolous and an appeal therefrom would not be taken in good faith. Further, this action is hereby CONSOLIDATED with the case of *Parr v. M.T.S.U., et al.*, Civil Action No.3:98-0865. The Clerk is directed to transfer this action to the docket of the Honorable William J. Haynes.

IT IS SO ORDERED,

/s/ Robert L. Echols
ROBERT L. ECHOLS

UNITED STATES DISTRICT JUDGE

This document was entered on the docket in compliance with Rule 58 and/or Rule 79(a)

FRCP on 8/28/00 By LAB

APPENDIX O

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

LORI PARR, *pro se*,	)	
Plaintiff,	)	
v.	)	
MIDDLE TENNESSEE STATE UNIVERSITY,[1]	)	
and	)	**Case No. 3:98-0865**
DONALD CURRY, J. MAIER, DR. MICHAEL A. GIBSON, JAMES WALKER, President in their official and individual capacities,[2]	)	**Judge Haynes** **Magistrate Judge Brown**
Defendants.	)	

MOTION TO RECONSIDER DEFENDANTS' MOTION TO DISMISS DEFENDANTS CURRY, MAIER, GIBSON, AND WALKER IN THEIR INDIVIDUAL CAPACITIES

(Filed Jun. 28, 2000)

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[1] Plaintiff's claims against Defendant MTSU are currently on appeal to the Sixth Circuit Court of Appeals in Case No. 98-6701.

[2] Plaintiff's claims against Defendants Curry, Maier, Gibson and Walker in their **official** capacities are currently on appeal to the Sixth Circuit Court of Appeals in Case No. 99-6296.

Defendants Curry, Maier, Gibson, and Walker submit this Memorandum in Support of Defendants' Motion to Reconsider the Court's denial of Defendants' Motion to Dismiss Plaintiff's claims against them in their individual capacities brought pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted.

1. The Court erroneously relied upon Title III of the ADA in its previous order denying Defendants' Motion to Dismiss.

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FRCP on 3/29/01 By mge

ORDER

This motion is GRANTED as to Title II and III of the ADA, do not impose individual liability. *See Walthen v. General Electric Co.*, 115 F.3d 400, 404 n.6 (6th Cir. 1997); *Montez v. Romer*, 32 F.Supp.2d 1235, 1240 (D. Colo. 1989).

/s/ Judge Williams J. Haynes, Jr.
USDJ
3-28-01

APPENDIX P

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

LORI ANN PARR Plaintiff	)	
vs.	)	Civil Action No. 3:98-0865
MIDDLE TENNESSEE STATE UNIVERSITY, et al.	)	Judge Campbell Judge Brown
Defendants.	)	

PLAINTIFF'S MOTION FOR PERMISSION TO AMEND COMPLAINT

(Filed Jun. 29, 2000)

Comes now the plaintiff before this Honorable Court and moves the Court to grant the plaintiff for permission to amend some or all of plaintiff's complaint, as follows:

1. For clarity and more definite statement, to specify that plaintiff is alleging that defendants have violated the Rehabilitation Act of 1973, as so stated on page 2 on plaintiff's Complaint "and any and all other applicable federal and/or constitutional laws.", as well as the Americans With Disabilities Act.

2. That Dr. C. Nathan Adams be named as a defendant, in both his individual and official capacities.

3. That Dr. C. Nathan Adams be specifically identified as the person who committed the acts and omissions of acts enumerated in plaintiff's Complaint: on page

5, alphabet b.), c.), d.); on page 6, g.); and on page 7, n.).

This document was entered on the docket in compliance with Rule 58 and/or Rule 79(a)

FRCP on 3/29/01 By mgc

ORDER

This motion is GRANTED. Fed.R.Civ.P. 15(a).

/s/ Judge William J. Haynes, Jr.
USDJ
3-28-01

APPENDIX Q

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

LORI ANN PARR Plaintiff vs. MIDDLE TENNESSEE STATE UNIVERSITY, et al. Defendants.	)	Civil Action No. 3:98-0865 Judge Campbell Judge Brown

COMPLAINT

[Amended Complaint]

(Filed Mar. 28, 2001)

I. INTRODUCTION

1. Comes now the Plaintiff before this Honorable Court, and would show that the Defendants have discriminated against the Plaintiff on the basis of her disability, in its administration of educational policies and procedures, and in its acts and omissions of acts, by allowing certain individuals in the University to engage in a long-term pattern of discrimination, retaliation, and abuse of and against the Plaintiff (and her husband), in the Plaintiff's pursuit of her Masters Degree in Accounting and Computer Information Systems (ACIS), creating an increasingly

[This document was entered on the docket in compliance with Rule 58 and/or Rule 79(a), FRCP on 3/29/01 By mg]

[ORDER Plaintiff is given leave to file this amended complaint Fed. R. Civ. P. 15(a) William J. Haynes, Jr., USDJ 3-28-01]

hostile, threatening, and discriminating environment since October of 1994, with the final discriminatory act alleged in this Complaint occurring on January 8, 1998, with the intent of these discriminatory and retaliatory acts by the Defendants being to a) deprive the Plaintiff of her masters degree of which all that has remained for the Plaintiff to complete her degree is one course, and the comprehensive examination requirement, since January of 1996, 1. b) to deprive the Plaintiff of numerous civil rights, including the right to equal access to educational opportunities, 3) to inflict pain and suffering, upon her, 4) to punish the Plaintiff for filing complaints about their mistreatment of her, and 5) to punish the Plaintiff for seeking legal protection from their mistreatment of her. The acts of the Defendants since 1994 have worked collusively together to make the attainment of the Plaintiff's masters degree in Accounting and Computer Information Systems far more difficult than for non-disabled students, requiring her to not only meet the rigorous demands of the masters program itself, but to accomplish these demands in an environment of hostility, abuse, harassment, threats, intimidation, coercion, retaliation, and discrimination because she filed a complaint against the ACIS department in 1994.

II. JURISDICTION AND VENUE

2. This is an action for declaratory relief, injunction, and damages to redress the deprivation of rights reserved to the Plaintiff under the Americans With Disabilities Act, U.S.C. 42, Chapter 126, Section 12101 to 12213; U.S.C. 42, Chapter 21, Section 1981 to 2000h-6; and under the Rehabilitation Act of 1973, and its Section 504, and any and all other applicable federal and/or constitutional laws. The Plaintiff further seeks compensatory and punitive

damages make [sic] whole relief, costs and attorney fees including discretionary costs for the unlawful discrimination suffered by the Plaintiff.

3. Jurisdiction over the Plaintiff's claims are invoked pursuant to U.S.C. 28 at 1331, which states "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States". *U.S.C. 28 at 1331*

4. Venue for this action properly lies in the United States District Court for the Middle District of Tennessee at Nashville because all of the acts complained of arose in this judicial district.

III. The Parties

5. Plaintiff, Lori Ann Parr, is an adult female citizen of the United States, who is a resident of Rutherford County, and whose address is P.O. Box 2262, Murfreesboro, TN 37133. The Plaintiff is currently enrolled at Middle Tennessee State University in the graduate program of the Criminal Justice Administration department, working on a second master's degree, since she has been effectively blocked by the acts of the Defendants from completing her first masters degree in Accounting and Computer Information Systems since April of 1996. The Plaintiff is a documented disabled student with the university's Disabled Student Services, and has been so documented since 1993. The Plaintiff was provided with the accommodations of extra time, and the use of tape recorders, if necessary. The Plaintiff has two registered disabilities, namely, 1) Conversion Disorder, a rare non-epileptic seizure disorder which can cause the Plaintiff to black-out and become unconscious under excessive levels of stress, among other

symptoms, and 2) carpal and cubital tunnel syndrome in both wrists and both elbows, respectively, which makes it difficult and painful for the Plaintiff to engage in long-term handwriting or typewriting.

6. Defendant Middle Tennessee State University, is a state university which receives federal funding, and is therefore required to comply with the Americans With Disability [sic] Act in its educational policies and procedures, and other laws as indicated above in paragraph (II)(2), above. The university is represented through its employees, as well as through its Department of Accounting and Computer Information Systems, its College of Business, its Administration, and employees, agents, and representatives therein.

IV. FACTUAL ALLEGATIONS

7. In the Summer of 1993, the Plaintiff entered the graduate program of Middle Tennessee State University, and in the Fall of 1993, the Plaintiff entered the graduate program of the Department of Accounting and Computer Information Systems (ACIS). In October of 1994, the Plaintiff presented her accommodation form to Dr. William Jeffrey Clark, requesting additional time to complete an assignment. Dr. William Jeffrey Clark denied the Plaintiff her accommodation. The Plaintiff was subsequently treated in the emergency room at Vanderbilt University Medical Center, due in part to her attempts to complete the assignment without the accommodation. As a result of the denial of the accommodation, and subsequent consequences, the Plaintiff was forced to withdraw from the class. Subsequently, the Plaintiff filed a formal letter of

complaint with the Disability Office, with copy to the President of the University.

8. After filing her written complaint with the Disability Office, and the President's Office, the Plaintiff began to experience repeated discriminatory and retaliatory acts against her from various members of the ACIS Department, the College of Business, and the Administration of the University, during the remainder of her tenure in the ACIS department, and on through January 8, 1998. The discriminatory and retaliatory acts committed against the Plaintiff include, but are not limited to, the following acts listed in Parts A.: Discriminatory/Retaliatory Acts That Occurred Prior To The One-Year Statute (Predicate Acts), and, B. Discriminatory Acts That Occurred Within The One-Year Statute, as follows [all acts occurred after the Plaintiff filed her disability-related letter of complaint in 1994]:

A. Discriminatory/Retaliatory Acts That Occurred Prior To The One-Year Statute

(Predicate Acts)

a.) The Plaintiff had ordered equipment for a class presentation. Immediately before the presentation, when she came to pick up the equipment, the Plaintiff was told that the equipment was locked up in the office of Dr. Carol Clark, the wife of Dr. William Jeffrey Clark, with the message to be relayed to the Plaintiff that she "needed to learn how to go through proper channels". The Plaintiff had to proceed with her presentation without the equipment, embarrassing her in front of her co-presenters, the class, and the instructor.

b.) The Plaintiff was denied an interview for a graduate assistantship in the ACIS department by Dr. C. Nathan

Adams, interim chairman for the department, even though she had filed all necessary documents for her application for a graduate assistantship, and even though the Plaintiff was as or more qualified for the position than those who were hired. The Plaintiff was a United States citizen, and was not even interviewed, even though other graduate students who were not United States citizens, and had fewer qualifications, were interviewed, and subsequently hired for the same position the Plaintiff applied for.

c.) The Plaintiff was forced by Dr. C. Nathan Adams – when she was nine months pregnant and three days away from giving birth to her third son – to take a difficult test in a small, unventilated supply closet, in a desk/chair that was so small that the Plaintiff had to sit sideways to fit in the chair.

d). The University through Dr. C. Nathan Adams, allowed Dr. William Jeffrey Clark to come into the supply closet while the Plaintiff was taking the test mentioned in paragraph A. (c.), and close the door so that he and the Plaintiff were alone in the small supply closet, where Dr. William Jeffrey Clark then proceeded to assault the Plaintiff, while she was nine-months pregnant, by stepping on her foot, and putting the weight of his body on her foot while he reached above the Plaintiff pretending to get something above her, sticking his stomach and then his crotch into her face, and then allowing his crotch to remain in the Plaintiff's face for an extended period of time, essentially trapping the Plaintiff by leaning his body against her and stepping on her foot, and frightening her to the point that it caused physical distress to her unborn child, and caused the onset of the symptoms of the Plaintiff's conversion disorder.

e.) Discriminating against the Plaintiff in the grading practices of the comprehensive examination question, by failing the Plaintiff's answer on a comprehensive examination question, by falsely stating that the Plaintiff's answer was "too short" even though it was almost two pages long, and the same identical question of another student at the same comprehensive examination was passed even though that student's answer was less than one-half page in length.

f.) Denying the student the right to have the professor who was supposed to grade the Plaintiff's comprehensive examination question review the question to examine whether it had been graded in a discriminatory manner.

g.) Grading the Plaintiff's husband in a retaliatory fashion, causing him to leave the ACIS department, and change majors because of the retaliatory grading, and fear of future retaliatory grading.

h.) Denying the Plaintiff's right to have a copy of her educational record.

i.) Denying the Plaintiff the right to have a written copy of the comprehensive examination grading policy, and other policies, and procedures related to the comprehensive examination.

j.) Denying the Plaintiff the right to have written university definitions of the Appeals Handout in order to have proper definitions for the submission of her appeal of her comprehensive examination grade to the Graduate Council.

k) Denying the Plaintiff the right to have a written explanation for the failing of the Plaintiff's comprehensive examination question.

l) Denying the Plaintiff the name of who authored the Appeals Handout, to request definitions from that person in preparation for the submission of her appeal of her comprehensive examination grade to the Graduate Council, after she was denied the definitions from the Graduate Office.

m) Denying the Plaintiff right to interview other students who took the comprehensive exam in preparation for the submission of her appeal of her comprehensive examination grade to the Graduate Council.

n). Denying the Plaintiff proper administrative support and assistance in attaining the above-mentioned information in preparation for the submission of her appeal of her comprehensive examination grade to the Graduate Council.

o.) Violating the Plaintiff's right to privacy under federal law [U.S.C. 42-2000aa.]by accessing her student e-mail account, without a warrant, and without her permission.

p) Motivating a fellow student in the ACIS department to call the Plaintiff at her home, and threaten her with the destruction of her career if she filed a legal action against the University.

q.) Libeling, ridiculing, humiliating, and harming the Plaintiff's professional reputation by the official issuance of a formal letter from a high-ranking university member, Dr. Barbara Haskew, Vice-President of Academic Affairs, to several upper-administration personnel – including the head of the affirmative action office, Dr. Forrestine Williams – in which the letter falsely stated that there were no records of the Plaintiff's conversion disorder in the Disability Office – nor accommodations for such – when

there were records of the Plaintiff's conversion disorder and accommodations for such in the Disability Office, and had been since 1994.

r.) Denying the Plaintiff the right to a course substitution at Tennessee State University for QM 677, when such a substitution had been offered to a fellow student.

s.) Denying the Plaintiff the right to a list of course substitutions, even though such substitutions had been offered to fellow students.

t.) Denying the Plaintiff proper help from the Women's Center, the Affirmative Action Office, and the Administration, from the abuse, discrimination, and retaliatory acts being inflicted upon the Plaintiff and her husband.

B. Discriminatory Acts That Occurred Within The One-Year Statute

a) By summer of 1997, it was clear to the Plaintiff that she would receive no supportive materials to present with her appeal to the Graduate Council, and that the University – through certain employees, agents, and representatives therein – was deliberately attempting to handicap the student in her appeal of her comprehensive examination grade by preventing her access to such supportive materials for her defense, as further punishment for complaining about the mistreatment she had received in the ACIS graduate department. Consequently, the Plaintiff was forced to submit an appeal to the Graduate Council without any substantial evidence, thereby forcing the entire appeal on a credibility battle between the Plaintiff [whose professional reputation had already been damaged by the false statements made about her as referenced in

paragraph A.q.] – and three high-ranking university personnel, namely, 1) Dr. Dwight Bullard [Associate Dean, College of Business], 2) Dr. Michael Gibson [Chairman of the ACIS Department], and 3) Dr. Donald Curry [Dean of Graduate Studies]. This was clearly a losing battle for the Plaintiff since her health was now failing, and because the University had clearly constructed a powerfully persuasive position for itself by not only degrading the Plaintiff's professional reputation and credibility, but also by effectively tying her hands behind her back and stuffing an evidentiary gag in her mouth – through its denial of supportive materials to the Plaintiff – before she approached the Graduate Council with her appeal. Predictably, on September 23, 1997, the Graduate Council issued a memorandum denying the Plaintiff's appeal.

b) In desperation to save her masters degree, on October 8, 1997, the Plaintiff requested course substitutions at Tennessee State University to complete the final two requirements for her masters' [sic] degree from the ACIS department chairman. On October 10, 1997, the request was denied by Dr. Michael Gibson.

c.) On October 28, 1997, the Plaintiff requested from the ACIS department chairman that she be able to view her comprehensive examination in a non-threatening environment. On October 31, 1997, the request was denied by Dr. Michael Gibson.

d.) In October 1997, a second request was sent by the Plaintiff to the ACIS department for a written explanation of her grade on the comprehensive examination. The request was never answered by Dr. Maier.

e.) Then, on November 4, 1997, the Plaintiff received from Dr. Donald Curry, the Graduate Dean, copies of

educational records that she had requested from him. From these copies – and an accompanying letter – the Plaintiff discovered that Dr. Donald Curry had submitted a letter he had written to the Plaintiff – in which he falsely stated that the majority of Plaintiff's appeal was based on academic judgment, a non-appealable basis – to the Graduate Council. Such a submission to the Graduate Council of this letter not only breached the Plaintiff's privacy rights, but also constituted serious discrimination against the Plaintiff since it is a violation of policy for the Dean of Graduate Studies to influence the Graduate Council on such a matter. The submission of this letter to the Graduate Council – without the Plaintiff's knowledge or her permission – along with a letter from Dr. Bullard [the Associate Dean and Director of Graduate Studies; College of Business], and a letter from Dr. Michael Gibson [Chairman of the ACIS Department], each letter degrading the Plaintiff's appeal, acted collusively to seriously discriminate against the Plaintiff by improperly biasing, prejudicing, and negatively influencing the Graduate Council against the Plaintiff, by the powerfully collusive suggestion of three high-ranking university members that the Plaintiff's appeal had no merit, and that her appeal should be denied, of which it was then denied by the Graduate Council.

f.) Additionally, in his letter submitted to the Graduate Council, Dr. Michael Gibson, the Chairman of the ACIS Department, seriously misled the Graduate Council by stating to them in writing that he obviously had the authority to determine if the Plaintiff's failing grade on Dr. Remington's portion of the comprehensive examination was discriminatory or not, since Dr. Remington had been one of his students at the University of North Texas

[paraphrased]. The Plaintiff spoke to Dr. Remington after Dr. Gibson made this statement to the Graduate Council, and Dr. Remington told the plaintiff that he had never been a student in Dr. Gibson's classes at the University of North Texas, or anywhere else.

g.) Additionally, Dr. Dwight Bullard, Associate Dean and Director of Graduate Studies, College of Business, is a good friend of the student in the ACIS department who called the Plaintiff and threatened her that members of the ACIS department would destroy her career if she filed a legal action against the university, as indicated in paragraph (A.)(p), above.

h.) On January 8, 1998 – after requesting a copy of her comprehensive examination in preparation for legal action since the six-year matriculation period of the Plaintiff's masters degree in ACIS was approaching its ending in August 1999 – the plaintiff was again denied a copy of her comprehensive examination [an educational record] by Dr. Michael Gibson, Chairman of the ACIS Department.

i) Allowing and engaging a discriminatory testing practice, policy, and procedure in Dr. C. Nathan Adam's Quantitative Methods 677 class (hereinafter "QM 677") whereby students who can find old QM 677 tests from former students from previous years in QM 677 with the answers to such old tests in QM 677 into active examinations in which the old test questions are the identical questions being asked on the active tests, thereby allowing such students to simply copy the answers on to the active test reducing their test taking time substantially, without making such old tests with the answers on them available to the plaintiff in any library, book, or any other publicly accessible place forcing the plaintiff to manually calculate the problems rather

than simply copying the answers directly from the old tests, seriously handicapping the plaintiff's ability to compete academically.

j.) During an investigation in February 1997, Dr. C. Nathan Adams falsely stated to the Vice President of Academic Affairs that there were no available classrooms to have the student take her test in QM 677 in April 1996, to justify why he placed the plaintiff in an unventilated supply closet to take such test, when in fact the plaintiff saw numerous open empty classrooms on the first floor of the university building, where the ACIS office was, in which the plaintiff was forced to take the test in a supply closet. The plaintiff did not find out about this false statement made by Dr. Adams until she received documents from the defendants through discovery, on or about February 2000.

k.) That Dr. C. Nathan Adams did engage in discrimination and retaliation on a final examination grading that occurred on or about April 29, 1999, in which he gave Student *D (see attachment 1)* thirteen (13) extra points on Student D's final examination and did not give the same extra thirteen (13) points to the plaintiff on her final examination. Students A, B, and D told the plaintiff that they only answered questions 1, 2, and 4, on the final examination. According to documentation given to the plaintiff by Dr. Adams, via defendant Maier, the maximum cumulative points that could be earned for answering questions 1, 2, and 4 was 70 points *(see attachment 2)* . But Dr. Adams gave student D thirteen points above the maximum cumulative allowed for Student D's answering of questions 1, 2, and 4 – thereby giving Student D thirteen extra points, but not giving the same extra thirteen points to the plaintiff on her final examination.

l. That Dr. C. Nathan Adams did deduct more points off of plaintiff's errors on tests than he did for other students who made the same errors on the same tests, damage from such acts accumulating at the assignment of the final grade.

m. That the plaintiff was denied the right to a fair hearing before the Grade Appeal Committee on May 1, 2000, by the following acts and omissions of acts, practices, policies, and procedures:

1. Not allowing the plaintiff to be present when Dr. Adams gave his testimony to the Grade Appeals Committee, to cross-examine, or rebut his testimony.

2. Not providing the plaintiff with a written key to the final examination to show the Grade Appeal Committee where Dr. Adams had engaged in discriminatory and retaliatory grading.

3. Not providing the plaintiff with access to the other students' final examinations to show the Grade Appeal Committee where Dr. Adams had engaged in discriminatory and retaliatory grading.

n. And other discriminatory and retaliatory acts.

V. CAUSES OF ACTION

The Defendants have engaged in a long-term pattern of unlawful discriminatory and retaliatory acts, omissions of acts, practices, policies, and procedures against the Plaintiff because of the Plaintiff's disability, and disability-related complaints, in violation of the Americans With Disabilities Act; U.S.C. 42, Chapter 126, Section 12101 to

12213; U.S.C. 42, Chapter 21, Section 1981 to 2000h-6; and the Rehabilitation Act of 1973, and any and all other applicable federal and/or constitutional laws, as listed in paragraph (II)(2) of this Complaint. These acts have constituted a deprivation of the Plaintiff's federally protected rights, as previously documented in this Complaint. Therefore, the Defendants are liable to the Plaintiff for punitive and compensatory damages in an amount to be determined at trial.

VI. PRAYERS FOR RELIEF

WHEREFORE, the Plaintiff prays that this court empanel a jury, to hear this case, and that the Plaintiff be awarded the following:

1. Make whole relief by way of granting the Plaintiff her masters degree in Accounting and Computer Information Systems, along with the two years of salary at a comparable state job for a person with such a masters in Summer of 1996, or some alternate remedy deemed by the Court, along with the Plaintiff's attorney fees, costs, and discretionary costs.

2. That the Plaintiff be granted injuncture [sic] relief enjoining the Defendants from engaging in the practices of discrimination and/or retaliatory acts, omissions of acts, policies, procedures, and practices toward disabled students, including the Plaintiff. Also, that the Court retain jurisdiction over this action to assure compliance with the orders of this Court and require the Defendants to file such reports as the Court deems necessary to evaluate such compliance with the orders of this Court.

3. That the Plaintiff be awarded compensatory damages and punitive damages in an amount to be established at trial for the Plaintiff.

4. That the Plaintiff be awarded attorney fees and costs, in an amount to be determined by the Court pursuant to applicable law. And further, that the Plaintiff be awarded all costs, fees and incidental expenses of litigation, including discretionary costs.

5. That the Plaintiff be awarded such other and further relief that the Court deems just and proper.

Respectfully submitted,

/s/ Lori Ann Parr
Lori Ann Parr
825 South Church Street
#2262
Murfreesboro, TN 37130
(615)893-4873

CERTIFICATE OF SERVICE

I swear and affirm that a copy of this AMENDED COMPLAINT has been delivered by certified mail to Mary Collier, Attorney for Defendants, 425 Fifth Ave. North, Nashville, TN 37243, and to Dinah Michael, attorney for C. Nathan Adams, 201 West Main Street, Suite 201, Murfreesboro, TN 37130, on this the 28th day of June, 2000, certification numbers 70993400000716950583 and 70993400000716950590.

/s/ Lori Parr
Lori Parr

Attachment 1

Computer Information Systems **MTSU**
P.O. Box 45
Middle Tennessee State University
Murfreesboro, Tennessee 37132
(615) 898-2362

August 30, 1999

Ms. Lori Parr
P.O. Box 2262
Murfreesboro, TN 37133

Dear Ms. Parr,

As I indicated in my last letter concerning the course you took, I would provide the grade information you requested at the earliest possible date. The information for course QM 677, 1999 Spring term follows:

	Student A	Student B	Student C	Student D	Student E
Exam 1	87	81	49	90	43
Exam 2	76	*	59	85	50
Final Exam	70	55	**	83	43
Sem Avg	78	64	**	86	45
Scaled Pts	14	14	NA	14	14
Total Pts	92	78	NA	100	59
Pct Change	18	22		16	31
Letter Grd	A	C+	F	A	D

I sincerely hope that this helps to explain your grade in relation to the other students in the class and that you are satisfied you were treated equitably by Dr. Adams in the grading process.

Respectfully,

/s/ J. Lee Maier
J. Lee Maier, Chair
Computer Information Systems
Middle Tennessee State University

Attachment 2

September 14, 1999

Dr. J.L. Maier
P.O. Box 45
M.T.S.U.
Murfreesboro, TN 37132

* Dr Maier returned this sheet to me with the point value written in the empty spaces.

Dear Dr. Maier:

I am in receipt of my copy of the final exam, and I appreciate your sending that to me.

Would you please forward to me a list from Dr. Adams that details the points that were assigned to each of the final exam questions, as follows:

Total Possible Points To Earn On The Question

Question 1: 23

Question 2: 22

Question 3: 30
(Including sub-points for part a., and b, 1, b.2, b.3, and b.4) 6 pts each

Question 4: 25

I appreciate your assistance in this matter.

Kindly,

/s/ Lori Parr
Lori Parr

Computer Information Systems **MTSU**
P.O. Box 45
Middle Tennessee State University
Murfreesboro, Tennessee 37132
(615) 898-2362

September 22, 1999

Ms. Lori Parr
PO Box 2262
Murfreesboro, TN 37133

Dear Ms. Parr,

Attached is the information you requested regarding point distribution on the final exam in QM 677.

Respectfully,

/s/ J. Lee Maier
J. Lee Maier, Chair
Computer Information Systems

APPENDIX R

United States District Court for the MIDDLE District of TENNESSEE

Lori Ann Parr

Plaintiff,

vs.

CASE NO. 3:98-0865 Haynes

Middle Tennessee State University; Dr. Donald Curry; Dr. J. Maier; Dr. Michael A. Gibson; Dr. James Walker; (Including its Dept. of Accounting and Computer Information Systems (ACIS), its College of Business, its Administration, (and employees, agents, and representatives, therein))

Defendants.

NOTICE OF APPEAL

(Filed July 12, 2002)

Notice is hereby given that (here name all parties taking the appeal) Lori Ann Parr, hereby appeals to the United States Court of Appeals for the Sixth Circuit from (the final judgment) (from an order (describing it)) the final judgment/by order dismissing case for lack of subject mater jurisdiction entered in this action on the (seventeenth) 17th day of June, 2002.

(s) Lori Ann Parr

Address: 4112 Nolensville Pike
#111854
Nashville, TN 37222-1854
615-837-0054

~~Attorney for~~ pro se /s/ Lori Ann Parr

cc: Opposing Counsel ✓
Court of Appeals ✓

APPENDIX S

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

LORI ANN PARR Plaintiff (Appellant)	)	
v.	)	Case No.: 3:98-0865
MIDDLE TENNESSEE STATE UNIVERSITY, et al.	)	JUDGE HAYNES
Defendants (Appellees)	)	

CERTIFICATE & STATEMENT OF THE ISSUES

Pursuant to App.R. 10(b), plaintiff-appellant hereby states that there are no transcripts of any hearings or trials to be ordered for transcript to be sent to the Sixth Circuit Court of Appeals, along with the record of this cause of action, on appeal.

STATEMENT OF THE ISSUES

The plaintiff-appellant herein lists the statement of the issues she will be presenting to the Sixth Circuit Court of Appeals, on appeal:

STATEMENT OF THE ISSUES

I. DOES THE DISTRICT COURT HAVE SUBJECT MATTER JURISDICTION OVER THE PLAINTIFF-APPELLANT'S CASE, UNDER TITLE II, AND TITLE V, AND/OR THE REHABILITATION ACT, SINCE THE DEFENDANT-APPELLEE MTSU IS A STATE UNIVERSITY (AND ITS EMPLOYEES/AGENTS ARE EMPLOYEES/AGENTS OF A STATE UNIVERSITY) THAT RECEIVES

FEDERAL FUNDING, AND UPON RECEIPT OF FEDERAL FUNDING SUCH STATE UNIVERSITY AND ITS EMPLOYEES/AGENTS WAIVE THEIR SOVEREIGN IMMUNITY UNDER TITLE II, TITLE V, AND/OR THE REHABILITATION ACT? AND IF SO, SHOULD PLAINTIFF-APPELLANT'S CASE BE REMANDED BACK TO THE DISTRICT COURT FOR TRIAL UNDER TITLE II, TITLE V, AND/OR THE REHABILITATION ACT?

II. CONSIDERING THE COURT'S RULING IN *POPOVICH v. CUYAHOGA COUNTY COURT OF COMMON PLEAS*, 276 F3d. 808 (6th Cir. 2002)[1], AND THE DISTRICT COURT'S RELIANCE UPON THIS CASE FOR ITS FINAL JUDGMENT IN PLAINTIFF-APPELLANT'S CASE, DOES THE DISTRICT COURT HAVE SUBJECT MATTER JURISDICTION OVER THE PLAINTIFF-APPELLANT'S CASE UNDER THE DUE PROCESS CLAUSE OF TITLE II, SINCE THE PLAINTIFF-APPELLANT ALLEGES DUE PROCESS VIOLATIONS REGARDING HER DISABILITIES/DISABILITY RELATED COMPLAINTS, AND THE APPEALS CONCERNING HER LAST TWO REMAINING REQUIREMENTS FOR HER MASTER'S DEGREE IN ACIS (THE COMPREHENSIVE EXAM AND QM677), IN HER COMPLAINT? AND IF SO, SHOULD PLAINTIFF-APPELLANT'S CASE BE REMANDED BACK TO THE DISTRICT COURT FOR TRIAL UNDER THE DUE PROCESS CLAUSE OF TITLE II?

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[1] *Popovich v. Cuyahoga County Court of Common Pleas (98-4100; 98-4540, U.S. Sixth Circuit)* is currently stayed pending a petition for writ of certiorari filed on April 8, 2002 with the United States Supreme Court, No. 01-1503, with an extension of time granted for all respondents extended to July 14, 2002.

III. CONSIDERING THAT THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT STATES "NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE, LIBERTY, OR PROPERTY WITHOUT DUE PROCESS OF LAW . . ."[2] DID THE PLAINTIFF-APPELLANT HAVE A PROPERTY INTEREST IN THE FUTURE EARNING POTENTIAL, AND OTHER FUTURE BENEFITS, OF THE MASTER'S DEGREE IN ACIS SHE HAD BEEN PURSUING SINCE 1993, DUE TO THE FACT THAT SHE HAD INVESTED IN SUCH FUTURE EARNING POTENTIAL, AND OTHER FUTURE BENEFITS, WITH SIGNIFICANT NON-DISCHARGEABLE STUDENT LOAN DEBT, IN ORDER TO ACHIEVE HER MASTER'S DEGREE IN ACIS, AND SINCE PLAINTIFF-APPELLANT ALLEGED AND INTENDED TO SHOW AT TRIAL THAT UPON COMPLETION OF HER RETAKING OF QM 677 BY MAY 1999 – WHILE HER INSTANT CASE WAS PENDING IN FEDERAL DISTRICT COURT – THAT SHE HAD SUCCESSFULLY COMPLETED ALL REQUIREMENTS FOR HER MASTER'S DEGREE IN ACIS BY MAY 1999, BUT THAT THROUGH THE DEFENDANT-APPELLANTS' DISCRIMINATORY AND RETALIATORY MANIPULATIONS OF GRADING PRACTICES, POLICIES, AND PROCEDURES, SINCE 1996, THE DEFENDANTS-APPELLANTS HAD MADE IT FALSELY APPEAR THAT PLAINTIFF-APPELLANT HAD FAILED THESE LAST TWO REQUIREMENTS FOR HER MASTER'S DEGREE IN ACIS, WHEN IN FACT SHE HAD SUCCESSFULLY COMPLETED THESE LAST TWO REQUIREMENTS FOR

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[2] Amendment XIV, Section 1, U.S. Constitution, Ratified July 28, 1868.

THE MASTER'S DEGREE BY MAY 1999, AND WAS DEPRIVED BY THE DEFENDANT-APPELLANTS' ACTS AND OMMISSIONS [sic] OF ACTS FROM ENJOYING THE FUTURE BENEFITS (MONETARY AND OTHERWISE) OF THE MASTER'S DEGREE IN ACIS THAT SHE HAD EARNED BY MAY 1999, THEREBY CAUSING PLAINTIFF-APPELLANT NOT TO REALIZE, AND TO BE FOREVER DEPRIVED OF, THE FUTURE EARNING POTENTIAL AND OTHER FUTURE BENEFITS OF THE MASTER'S DEGREE IN ACIS THAT PLAINTIFF-APPELLANT HAD EARNED, AND THAT PLAINTIFF HAD INVESTED SIGNIFICANT, NONDISCHARGEABLE STUDENT LOAN DEBT TO EARN, AND TO ENJOY THE FUTURE BENEFITS FROM?

IV. DOES THE DISTRICT COURT HAVE SUBJECT MATTER JURISDICTION OVER THE PLAINTIFF-APPELLANT'S CASE UNDER THE FOURTEENTH AMENDMENT UNDER THE THEORY OF RATIONAL BASIS REVIEW? AND IF SO, SHOULD PLAINTIFF-APPELLANT'S CASE BE REMANDED BACK TO THE DISTRICT COURT FOR TRIAL UNDER THE FOURTEENTH AMENDMENT THEORY OF RATIONAL BASIS REVIEW?

V. DOES THE DISTRICT COURT HAVE SUBJECT MATTER JURISDICTION OVER THE PLAINTIFF-APPELLANT'S CASE – OR ANY PART OF PLAINTIFF-APPELLANT'S CASE – UNDER ANY OTHER FEDERAL AND/OR CONSTITUTIONAL LAW? AND IF SO, SHOULD PLAINTIFF-APPELLANT'S CASE – OR ANY PART OF PLAINTIFF-APPELLANT'S CASE – BE REMANDED BACK TO THE DISTRICT COURT FOR TRIAL UNDER ANY OTHER FEDERAL AND/OR CONSTITUTIONAL LAW?

VI. IS PLAINTIFF-APPELLANT ENTITLED TO APPOINTMENT OF COUNSEL FOR TITLE II AND TITLE V ISSUES, AND/OR THE REHABILITATION ACT?

VII. IS PLAINTIFF-APPELLANT ENTITLED TO PRO SE SELF-REPRESENTATION FEES AND COSTS UNDER THE EQUAL ACCESS TO JUSTICE ACT, 28 U.S.C. SECTION 2412, OR ANY OTHER LAW OR ACT, UP TO THAT POINT IN WHICH SHE IS ABLE TO RETAIN COUNSEL, SHOULD SHE PREVAIL ON ANY OF THE ISSUES AT THE DISTRICT COURT AND/OR APPELLATE LEVEL?

Respectfully submitted,

/s/ Lori Ann Parr
Lori Ann Parr

4112 Nolensville Pk.
Box 111854
Nashville, TN 37222-1854
615-837-0054

Certificate of Service

I hereby swear and affirm that a copy of this Certificate/Statement of the Issues has been sent to the defendants' attorney of record, Mary Collier, 425 Fifth Ave. North, Nashville, TN 37243, on this the 12th (twelfth) day of July, 2002, certified mail.

/s/ Lori Ann Parr
Lori Ann Parr

APPENDIX T

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

LORI ANN PARR Plaintiff-Appellant	)	
v.	)	Case No.: 3:98-0865
MIDDLE TENNESSEE STATE UNIVERSITY, et al. Defendants-Appellees	)	JUDGE HAYNES

NOTICE OF CORRECTIONS

Plaintiff-appellant herein gives notice of corrections to her Notice of Appeal, and Certificate/Statement of the Issues filed on July 12, 2002, as follows:

1. Dr. C. Nathan Adams' name was incorrectly left off of the caption list of Defendants-Appellees; plaintiff-appellant herein affirms that Dr. C. Nathan Adams is a defendant-appellee in the appeal, and that plaintiff-appellant will correctly include Dr. C. Nathan Adams' name in the caption of her appeal brief to the Sixth Circuit Court of Appeals.

2. Plaintiff-appellant incorrectly identified the defendant-appellees as "defendant-appellants" in part III. Pg 2/3 of her Certificate/Statement of the Issues; plaintiff-appellant will correct this error in her appeal brief to the Sixth Circuit Court of Appeals.

3. Plaintiff-appellant apologizes to the Court and to the defendant-appellees for any inconvenience these errors may have caused.

Respectfully submitted,

/s/ Lori Ann Parr
Lori Ann Parr
4112 Nolensville Pk.
P.O. Box 111854
Nashville, TN 37222-1854
615-837-0054

Certificate of Service

I hereby swear and affirm that a copy of this Notice of Corrections has been sent to the defendants-appellees' attorney of record, Mary Collier, 425 Fifth Ave. North, Nashville, TN 37243, by certified mail.

/s/ Lori Parr Lori Parr

Supreme Court, U.S.
FILED
FEB 2 3 2004
OFFICE OF THE CLERK

(3)

No. 03-533

IN THE
SUPREME COURT OF THE UNITED STATES

LORI ANN PARR,

Petitioner,

v.

MIDDLE TENNESSEE STATE UNIVERSITY; DONALD CURRY; J.MAIER, Dr.; MICHAEL A. GIBSON; JAMES WALKER, President; C. NATHAN ADAMS,
In their official and individual capacities.

Respondents.

PETITIONER'S REPLY TO RESPONDENTS' BRIEF IN OPPOSITION

Lori Ann Parr
5424 Bell Forge Ln. E.
P. O. Box 1172
Antioch, TN 37011
(615) 837-5906

QUESTIONS PRESENTED

1. Does Congress have the constitutional authority to require states to pay money damages for violations of Title II of the Americans With Disabilities Act of 1990, 42 U.S.C. 12101 et seq. (ADA) at State universities, and therefore did the Sixth Circuit err in affirming the judgment of the District Court dismissing the petitioner's claims for lack of subject matter jurisdiction under Title II of the ADA?

2. Does Congress have the constitutional authority to require states to pay money damages for violations of the Rehabilitation Act of 1973 (29 U.S.C. 790 et seq.) §504, et seq., as amended, (Rehabilitation Act) at State universities, and therefore did the Sixth Circuit err in affirming the judgment of the District Court dismissing the petitioner's claims for lack of subject matter jurisdiction under the Rehabilitation Act?

3. Does the severability clause of Title IV of the ADA (§ 12213) allow the remaining legal protections and legal remedies of the ADA for discrimination and retaliation of disabled students at State universities to remain enforceable if the accommodations provisions of the ADA are found to be unconstitutional, and therefore did the Sixth Circuit err in affirming the judgment of the District Court dismissing petitioner's claims for lack of subject matter jurisdiction under the ADA?

4. Did the Sixth Circuit err in concluding that all of the Petitioner's claims are violations of equal protection discrimination principles, and therefore did the Sixth Circuit err in affirming the judgment of the District Court dismissing the petitioner's claims for lack of subject matter jurisdiction?

5. Did the Sixth Circuit err in affirming the judgment of the District Court dismissing the petitioner's claims for lack of subject matter jurisdiction, when the petitioner raised claims against the Respondents in their individual capacities under 42 U.S.C. §1983?

LIST OF PARTIES

The Plaintiff-Petitioner in this action is Lori Ann Parr, who is proceeding *pro se*.The Defendants-Respondents in this action are Middle Tennessee State University (Respondent MTSU), Donald Curry (Respondent Curry), Dr. J. Maier (Respondent Maier), Michael A. Gibson (Respondent Gibson), James Walker, former President of MTSU (Respondent Walker), and C. Nathan Adams (Respondent Adams).Pursuant to Supreme Court Rule 29.4(b), Petitioner will serve a copy of this Reply to Respondents' Brief in Opposition on the United States Solicitor General because 28 U.S.C. § 2403(a) may apply.

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REPLY 5:

Respondent Adams Was Properly Served By The U.S. District Court But Adams Refused Service Of Process By The Court, and Respondents Curry, Maier, Gibson, and Walker Knew They Were Considered Defendants At The Onset Of Petitioner's Case No. 3-98-0865 (*Parr I*) In The U.S District Court 7

REPLY 6:

The State And Its Actors Violated 42 U.S.C. § 1983 By Selective Enforcement Of The Law By Denying The Petitioner's Fundamental State and Federal Right To A Fair and Impartial Hearing Before The Graduate Council 8

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TABLE OF AUTHORITIES

Popovich v. Cuyahoga County Ct.Com. Pl, 276 F. 3d 808 (6th Cir.), cert. denied, 123 S. Ct. 72 (2002).
Romer v. Evans, 116 S. Ct. 1620 (1996)
Stemler v. City of Florence, 126 F.3d 856 (6th Cir. 1997)
United States Dep't of Agric. V. Moreno, 93 S.Ct. 2821 (1973)

CITATIONS TO OPINIONS BELOW

The opinion of the United States District Court for the Middle District at Nashville, Tennessee, *Lori Ann Parr v. M.T.S.U., et al.*, No.: 3:98-0865, ***Parr I***, (Middle District, June 18, 2001) is unpublished (P. App. Part B). The opinion of the United States Court of Appeals for the Sixth Circuit, *Lori Ann Parr v. M.T.S.U., et al,* Record No. 02-5925 (Sixth Circuit, May 13, 2003) is unpublished (P. App. Part A). The June 17, 2002 order denying Petitioner's Motion To Amend And/Or Alter Final Judgment And For More Clarity In Final Judgment of the June 18, 2001 final judgment of the U. S. District Court is unreported (P. Reply App. 8), and the order denying the Petitioner's Motion For Leave To Amend Plaintiff's Motion To Alter And/Or Amend Judgment is unreported (P. Reply App. 6)[2]

JURISDICTION

The judgment of the United States Court of Appeals for the Sixth Circuit was entered on May 13, 2003. This Court has jurisdiction pursuant to 28 U.S.C. § 1254 (1).

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[2] Respondents included only partial renditions of these two orders in their Respondents Brief in Opposition. Petitioner has included the full copies in her Appendix to this Reply to Respondents' Brief in Opposition.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Americans With Disabilities Act of 1990, Title II & Title IV, 42 U.S.C. 12101, Title II, Part A, §'s 12131 to 12134, Title IV, §'s 12201 to 12213 (ADA) (P. App. Part C.)

Rehabilitation Act of 1973, § 504, as amended through 1998; 42 U.S.C. 2000d-7 (Rehabilitation Act) (P.App. Part C.)

42 U.S.C., § 1983 (P. App. Part C)

STATEMENT OF THE CASE

The Petitioner herein adopts by reference her Statement of the Case in Petitioner's Petition For A Writ of Certiorari To The United States Court of Appeals For The Sixth Circuit, filed in this matter.

ARGUMENT (REPLY)

REPLY 1: Petitioner Notes Her Objection To Respondents' Rewording Of Her Questions Presented

Petitioner notes her objection to the Respondents' rewording of Petitioner's "Questions Presented" in Petitioner's Petition For A Writ of Certiorari To The United States Court of Appeals For The Sixth Circuit.

REPLY 2:

Respondents Have Mislabeled *Parr I* and *Parr II*, and Have Created a New Label "*Parr III*" Not Used By Either

The U.S. District Court Or The Sixth Circuit In The Petitioner's Case

In the U. S. District Court's Order of June 15, 2001, docketed on June 18, 2001 (P. App. Part B.), the District Court states that *Parr I* refers to Petitioner's Case, *Parr v. Middle Tennessee State University, et al.,* No. 3- 98-0865, and states that *Parr II* refers to Petitioner's Case, *Parr v. Middle Tennessee State University, et al.*, Case No. 3-00-0398).[3]

The Sixth Circuit, in keeping with the U. S. District Court's opinion docketed on June 18, 2001, stated that *Parr I* refers to Petitioner's Case, *Parr v. Middle Tennessee State University, et al.,* No.3- 98-0865, and that *Parr II* refers to Petitioner's Case, *Parr v. Middle Tennessee State University, et al.*, Case No. 3-00-0398), as well (P. App. Part A.).

For some reason, the Respondents have stated in their Respondents' Brief In Opposition, that *Parr I* will now refer to the Respondents' interlocutory appeal to the Sixth Circuit, Case No. 98-6701 (R. Brief, p. 4), and that *Parr II* will now refer to Respondents' interlocutory appeal to the Sixth Circuit, Case No. 99-6296 (R. Brief, p. 5). And, Respondents have now labeled Petitioner's only appeal to the Sixth Circuit, Case No. 02-5925, as "*Parr III*," which is a new designation not ever noted in any filing at any time by the Sixth Circuit as a designation for Petitioner's only appeal to the Sixth Circuit, Case No. 02-5925, which is the subject of Petitioner's Petition For Writ Of Certiorari.[4]

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[3] This case was the petition filed by Petitioner in the U. S. District Court against MTSU and Defendant C. Nathan Adams, while the Petitioner's original case – 3-98-0865, was pending in the U. S. District Court. *Parr II* was subsequently consolidated with *Parr I.*

[4] For continuity, Petitioner will not use the Respondents labels, and will use the labels *Parr I* and *Parr II* as defined by the U. S. District Court and

REPLY 3:

Petitioner's Case No. 3-98-0865 (*Parr I*) Was Dismissed In Its Entirety Before The Sixth Circuit Issued PER CURIAM, Unpublished Opinions On Both Of Respondents' Interlocutory Appeals (98-6701 & 99-6296)

On June 18, 2001, the District Court entered its Final Judgment (*sua sponte)* in Petitioner's case into the docket (P. App. Part B.). On June 25, 2001, within the statutory limit, the Petitioner filed a Plaintiff's Motion To Amend And/Or Alter Final Judgment, And For More Clarity In Final Judgment (P. Reply App. 8) with the District Court. On July 24, 2001, Petitioner filed a Plaintiff's Motion For Leave To Amend Plaintiff's Motion To Alter And/Or Amend Judgment (P. Reply App.6) with the District Court.

On June 17, 2002, almost a year after Petitioner filed Plaintiff's Motion To Amend And/Or Alter Final Judgment, the District Court entered its Order into the docket denying Petitioner's Plaintiff's Motion To Amend And/Or Alter Final Judgment, And For More Clarity In Final Judgment, and dismissed Petitioner's case in its entirety with its Order (R. App.4). On June 17, 2002, almost a year after Petitioner filed her Plaintiff's Motion For Leave To Amend Plaintiff's Motion To Alter And/Or Amend Judgment, the District Court entered an Order into the docket denying Petitioner Leave to Amend her Motion To Alter And/Or Amend Judgment (R. App. 2) also noting that the case was dismissed.

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the Sixth Circuit , and will refrain from referring to her only appeal to the Sixth Circuit as "*Parr III*", and will instead refer to her only appeal to the Sixth Circuit as Case No. 02-5925, as noted in Petitioner's filings with the Court.

On July 12, 2002, within the statutory time limit, the Petitioner timely filed a Notice of Appeal of her case, Case No. 3:98-0865 (*Parr I*)[5], this being Petitioner's only appeal in the matter. The Petitioner's Notice of Appeal clearly stated that she was appealing the FINAL JUDGMENT [6]/By Order dismissing case for lack of subject matter jurisdiction[7] (R. App. 75).

On July 16, 2002, after the case was dismissed in its entirety, and four days after the Petitioner filed her Notice of Appeal, the Sixth Circuit entered a PER CURIAM, unpublished opinion, post-dismissal of Petitioner's Case No. 3:98-0865 (*Parr I*), concerning the Respondent's interlocutory appeal Sixth Circuit Case No. 98-6701[8] (R. App. 5).

On December 30, 2002, over five months after petitioner filed her Notice of Appeal, the Sixth Circuit entered a PER CURIAM, unpublished opinion, post-dismissal of Petitioner's Case No. 3:98-0865 (*Parr I*), concerning the Respondent's interlocutory appeal to the Sixth Circuit, Case No. 99-6296[9] (R. App. 13).

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[5] *Parr II* had previously been consolidated into *Parr I*, as stated prior.

[6] Entered by the Court on June 18, 2001

[7] Both Orders entered by the Court on June 17,2002 dismissed Petitioner's case, Case No. 3:98-0865 (*Parr* I) in its entirety.

[8] Although the Respondents' designate this interlocutory appeal as *Parr I*, it has never been designated as such by either the District Court or the Sixth Circuit.

[9] Although Respondents' designate this interlocutory appeal as *Parr II*, it has never been designated as such by either the District Court or the Sixth Circuit.

REPLY 4:

Petitioner's Rehabilitation Act Claims Are Properly Before The Court.

Petitioner's Amended Complaint, filed with the District Court on March 28, 2001, over a year before the dismissal of Petitioner's case in its entirety by the District Court on June 17,2002, denoted that the Petitioner was seeking relief under the Rehabilitation Act (R. App. 57). Additionally, on Petitioner's Statement of the Issues filed with Petitioner's Notice of Appeal (R. App. 77) Petitioner clearly states that she was presenting the issue of the Rehabilitation Act on appeal to the Sixth Circuit. The Sixth Circuit noted in its Order dismissing Petitioner's Sixth Circuit Case No. 02-5925 that the Petitioner was appealing a district court order dismissing her case under the ADA and the Rehabilitation Act (P. App. Part A.).

Additionally, in the District Court's final judgment in the Petitioner's Case No. 3:98-0865 (*Parr I*), on June 18, 2001, the District Court noted "In its ruling, the Sixth Circuit in Popovich noted that Title II of the ADA is an extension of the Rehabilitation Act of 1973 that would be covered by its Eleventh Amendment ruling. 227 F.2d at 640." (P. App. Part B), seeming to note the Sixth Circuit's stand on the Rehabilitation Act would be the same as its rulings on the ADA in regards to Eleventh Amendment issues. This ruling by the District Court occurred prior to the rehearing *en banc* of Popovich, resulting in the second *Popovich* ruling, *Popovich v. Cuyahoga County Ct. Com. Pl.*, in 2002.

While the Petitioner's Motion to Amend And/or Alter was pending in the District Court, the Sixth Circuit reheard the *Popovich* case *en banc*. Since the Sixth Circuit deemed part

of the ADA (and presumably the Rehabilitation Act) to be valid, based upon the issue of due process, of which the Petitioner believed due process issues were involved in her case, among other issues, Petitioner proceeded with her appeal to the Sixth Circuit after the Sixth Circuit's second ruling in *Popovich, Popovich v. Cuyahoga County Ct. Com. Pl.*, in 2002, after the District Court denied the Petitioner's Motion To Amend and/or Alter on June 17, 2002.

REPLY 5:

Respondent Adams Was Properly Served By The U.S. District Court But Refused Service Of Process By The Court, and Respondents Curry, Maier, Gibson, and Walker Knew That They Were Considered Defendants At The Onset Of Petitioner's Case No. 3-98-0865 (*Parr I*)

Respondent Adams was served in both his individual and official capacities by the U. S. District Court, after the U. S. District Court adopted the Magistrate's Report and Recommendation to consolidate Petitioner's second Complaint filed against MTSU and C. Nathan Adams (3:00-0398) (*Parr II*) (R. App. L 37-45) with Petitioner's first Complaint filed in the U. S. District Court (3:98-0865)(*Parr I*), but Respondent Adams refused service of process by the District Court as noted by the District Court in its Docket Sheet: R:103, Return of Service unexecuted upon Dr. C. Nathan Adams - attempted – "unclaimed" "return to sender" stamped on envelope (Assoc. Case # 3:00-98), entry date 9-25-00 (P. Reply App. 1).[10] Additionally, Petitioner filed her Notice of Corrections properly listing Respondent Adams as a named Defendant at the Sixth Circuit, as per Federal Rules of Civil

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[10] However, it appears Respondents' attorney has continued to represent Respondent Adams in both his capacities in the U. S. Sixth Circuit and U.S. Supreme Court.

Procedure Civ. Rule 60(a) allowing corrections before the case is docketed in the appellate court (P.Reply App.3)

Respondents state that "Because these four MTSU officials/employees were not named as Defendants in the Complaint, the district court's December 16, 1998, order was the first indication these four people had that Plaintiff's Complaint was being construed to name them as Defendants. (R. Brief P.5).The Petitioner issued a separate summons each for Curry, Maier, Walker, and Gibson on September 25, 1998, seven days after Petitioner filed her initial Complaint with the Court in September 18, 1998 (R. App. 19). These individual summonses were docketed by the District court docket as R:2; R:4; R:5,R:6, and process was completed upon Curry, Maier, Walker, and Gibson, as docketed by the District Court docket as R:11; R12; R13; R14 (P. Reply App. 1). Curry, Maier, Walker, and Gibson were all employees of defendant-appellee MTSU, and the caption on the Complaint they were individually served with stated "(and employees, agents, and representatives therein) (R.App. 19). Additionally, the Summonses issued by the U. S. District Court to Curry, Maier, Walker, and Gibson clearly identified them as defendants in the case. It is unclear how the Respondents could not have understood they were being named as defendants in the case – especially considering the level of education the Respondents have - when they were served with a Summons that clearly identified them as a defendant, and clearly stated in writing that they were a defendant in the case.

REPLY 6:

The State And Its Actors Violated 42 U.S.C. § 1983 By Selective Enforcement Of The Law By Denying The Petitioner's Fundamental State and Federal Right To A Fair and Impartial Hearing Before The Graduate Council

Petitioner properly raised the issue of 42 U.S.C. § 1983 in both her petition to the District Court (R. App. 57), and in Petitioner's Statement of the Issues to the Sixth Circuit (R. App. 80, Part IV & V). As stated by the Sixth Circuit in *Stemler v. City of Florence* 126 F. 3d 873, 874 (6th Cir. 1997), citing this Court's ruling in *United States Dep't of Agric. V. Moreno*, 93 S.Ct. 2821, and *Romer v. Evans*, 116 S. Ct. 1620 "If the constitutional conception of equal protection of the laws means anything, it must at the very least mean that a bare desire to harm a politically unpopular group cannot constitute a legitimate governmental interest" [and] "[t]he principle would be the same if Stemler had been arrested discriminatorily based upon her hair color, her college bumper sticker (perhaps supporting an out-of-state rival) or her affiliation with a disfavored sorority or company" [and] "the defendants violated the core principle of the Equal Protection Clause by choosing to exercise the power of the state against Stemler solely for the reason that they disapproved of her perceived sexual orientation."

The Respondents in Petitioner's case not only perceived that the Petitioner had disabilities and was a member of a group commonly referred to as "the disabled" who have been commonly known to be recipients of animus from others, but Respondents absolutely knew Petitioner was a member of such group since the Respondents had been retaliating and discriminating against Petitioner for years for filing a disability-related complaint against the ACIS department in 1994, with copy to Respondent Walker, the former president of the university. Respondent Walker was continuously sent copies of the written correspondence documenting the discrimination and retaliation Petitioner was experiencing in the appeal of her comprehensive examination in which the

Respondents were exercising the state powers they enjoyed as state officials to deprive the Petitioner of her fundamental right under both state and federal law to a fair and impartial hearing through their retaliatory and discriminatory acts and omissions of acts, under color of state law, in violation of 42 U.S.C. § 1983, as described in Petitioner's Complaint (R. App. 56-71). Respondent Walker continuously ignored the correspondence and allowed the remaining Respondents to continue on in their discriminatory and retaliatory acts and omissions of acts. As stated by the Sixth Circuit in Stemler, cited above, "it will often be difficult to find a rational basis for a truly discriminatory application of a neutral law." It is common knowledge that the right to a fair and impartial hearing is a neutral law, and the Record in the Petitioner's case documents that there was no rational basis for the Repondents' acts and omissions of acts whose intent was to deprive the Petitioner of a fair and impartial hearing.

Respectfully submitted,

Lori Ann Parr
5424 Bell Forge Ln. E.
P.O. Box 1172
Antioch, TN 37011
(615) 837-5906

No. 02-5925
IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

LORI ANN PARR)
Plaintiff-Appellant)
)
v.)
)
)
MIDDLE TENNESSEE STATE)
UNIVERSITY; DONALD CURRY;)
J MAIER, Dr.; MICHAEL A.)
GIBSON; JAMES WALKER,)
President; DR. C.NATHAN ADAMS)
Defendant-Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE MIDDLE DISTRICT OF TENNESSEE

REPLY BRIEF OF THE PLAINTIFF-APPELLANT

I. In reply to defendant-appellees' statements on page 4, part B, of their Brief of the Defendant/Appellees in which it is stated "Because these four officials/employees were not named as Defendants in the Complaint, the district court's December 16, 1998 Order was the first these four people learned that the district court was construing Plaintiff's Complaint to name them as Defendants." Parr replies that Parr issued a separate summons each for Curry, Maier, Walker, and Gibson on September 25, 1998 (R:2; R:4; R:5,R:6,

Summonses),and process was completed (R:11; R12; R13; R14), Curry, Maier, Walker, and Gibson all being employees of defendant-appellee MTSU, clearly identifying them as defendants in the matter as employees of defendant-appellee MTSU as cited in the caption.

II. In reply to defendant-appellees' statements in part C, on page 7 that "Magistrate Judge Brown recommended that some of Plaintiff's claims should survive a frivolity review", Parr agrees that those portions that survived the frivolity review were consolidated into the instant case, as noted in the Magistrate's Report and Recommendation cited by the defendant-appellees on page 7.

III. In reply to defendant-appellees' statements in footnote 4, on page 7, in which it is claimed that defendant-appellee Adams was not served process in his individual capacity, Parr replies that Adams was served in both his individual and official capacity by the District Court, but Adams refused service of process by the District Court (R:103, Return of Service unexecuted upon Dr. C. Nathan Adams –attempted – "unclaimed" "return to sender" stamped on envelope (Assoc. Case # 3:00-98), entry date 9-25-00).

IV. In reply to defendant-appellees' footnote 5, page 7, Parr recognized to the Court that she made a clerical

error on her Notice of Appeal in not handwriting defendant-appellee Adams' name in the caption of her Notice of Appeal, and Parr promptly filed a Notice of Corrections with the District Court (R:125, Notice of Corrections, filed on 7-22-02, and entered on 7-24-02) correcting her clerical error in compliance with Federal Rules of Civil Procedure (F.R.C.P.) Civ. Rule 60(a) allowing corrections before the case is docketed in the appellate court, the instant case being docketed in the appellate court on July 25, 2002 (See Attached Exhibit 1, Docketing Notice, 6th Circuit, dated July 25, 2002).

V. In reply to defendant-appellees' statements in their Summary of Argument, page 10 in which it is stated "Because Plaintiff did not include the district court's June 18, 2001, Order in her Notice of Appeal, Plaintiff has not appealed the district court's dismissal of her Rehab Act claims", Parr states that F.R.C.P. App. R. 4 (a)(1) only allows Parr to appeal the final judgment/order disposing of the case. The final Judgment/Orders disposing of the case entered on June 17, 2002 (R:120/121). Additionally, Parr attached to the pre-printed Notice of Appeal provided by the Court for appeals, the Statement of the Issues stating the issues that she was raising on appeal (R:122, Notice of Appeal/Statement of the Issues) since there was no room on the pre-printed Notice of Appeal to include the issues, said Statement of the Issues attached to Parr's Notice of Appeal including, among other issues, the Rehabilitation Act. Additionally, plaintiff raised the issue of the Rehabilitation Act in her Amended Complaint (R:109).

In reply to these above-stated and remaining arguments of the defendent-appellees in their Brief of the Defendant-Appellees, Parr again must rely on Federal Rules of Civil Procedure, Rule 12(b)(6), 28 U.S.C.A., Motions To Dismiss, Rule 12:

"Complaint should not be dismissed for failure to state a claim because it does not state all of the elements giving rise to a legal basis of recovery or because plaintiff misconceived the proper legal theory or claim if plaintiff is entitled to relief under any theory." P.955, *Scarborough v. Brown Group*; 935 F Supp. 954 (WD Tenn 1995) F.R.C.P. Rule 12 (b)96), 28 U.S.C.A. Motions to Dismiss, Rule 12.

Respectfully submitted,

/s/ Lori Ann Parr
Lori Ann Parr
4112 Nolensville Pk.
P.O. Box 111854
Nashville, TN 37222-1854
(615) 837-5906

EXHIBIT 1

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
100 EAST FIFTH STREET, ROOM 532
POTTER STEWART U.S COURTHOUSE
CINCINNATI, OHIO 45202-3988

Leonard Green
Clerk

Patricia J. Elder
(513)564-7034
www.ca6.uscourts.gov

Filed: July 25, 2002

Lori Ann Parr
4112 Nolensville Pike
P.O. Box 111854
Nashville, TN 37222-1854

RE: Case No. 02-5925
Parr v. Middle TN St Univ
District Court No. 98-00865

Your appeal has been docketed today as case number 02-5925. The case number and official caption, as it appears on the enclosure, must be on all documents submitted for filing in this case.

The Court's review of the case will be based upon the record of district court proceedings and the briefs filed by the parties. Your brief should explain to the Court the facts of the case, the issues of law which you feel entitle you to relief, and should state the relief which you are seeking. Enclosed you will find a form to be used to present your case in your own words, as clearly as you can. The Court is aware that you are not an attorney and it will not hold you to the same standards it requires of them in stating your case.

Appellant's Brief: Signed original & 6 copies
(See attached Pro Se Brief Forms)
Maximum Length: 30 Pages
Due 8/22/02

Appellee's Brief: Signed original & 6 Copies
Red Cover
Maximum Length: See Rule 32
For page or type – volume
Limitations
Due 9/19/02

Appellant's Reply Brief: Signed original & 6 Copies

	Gray Cover Due 10/3/02
Joint Appendix or: Photocopies of Record	5 Copies of Joint Appendix or 4 Copies of Record White Cover Due 10/10/02

Appellant's failure to file a brief or joint appendix by the established due dates may result in the dismissal of the case.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

LORI ANN PARR Plaintiff	)	
v.	)	Case No.: 3:98-0865
MIDDLE TENNESSEE STATE UNIVERSITY, et al. Defendants.	)	JUDGE HAYNES

PLAINTIFF'S MOTION FOR LEAVE TO AMEND PLAINTIFF'S MOTION TO ALTER AND/OR AMEND JUDGMENT (Filed July 24, 2001)

Comes now the plaintiff before this Honorable Court with her Motion and would respectfully request of this Honorable Court that the Court would grant to plaintiff leave to amend Plaintiff's Motion To Alter and/or Amend entered on June 26, 2001 [115-1], for the following reasons:

1. Plaintiff has come into receipt of knowledge, post-filing of her Motion To Amend and/or Alter, (See attached Docket Summary from the U.S. Court of Appeals For the Sixth Circuit, *Popovich v. Cuyahoga Cnty Court, et al.*, #98-4100, Attachment 1), that the *Popovich* case

has been resubmitted to the U.S. Court of Appeals For the Sixth Circuit, for re-hearing en banc, and that such case was argued June 6, 2001 on the issues of Title II and Title III of the Americans With Disabilities Act – which were, in part, the basis of the Court's final judgment in this matter – and that the U. S. Court of Appeals For the Sixth Circuit has not issued a final ruling in *Popovich*, on these issues.

Therefore, the plaintiff would ask the Court for leave to amend her Motion to Amend and/or Alter to request the Court to reconsider its final judgment until the final outcome of *Popovich.*

Respectfully requested,

/s/ Lori Ann Parr

Lori Ann Parr
4112 Nolensville Pk.
Box 111854
Nashville, TN 37222-1854
615-333-7567

CERTIFICIATE OF SERVICE

I swear and affirm that a copy of this plaintiff's Motion For Leave To Amend Plaintiff's Motion To Alter and/or Amend was mailed certified, certification number 70000600002472859493 to Ms. Mary Collier, 425 Fifth Avenue North, Nashville, Tennessee 37243 on this the 23rd day of July, 2001.

This document was entered on the docket in compliance with Rule 58 and/or Rule 79(a)

FRCP on 6-17-02 By gi

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

LORI ANN PARR	)	
Plaintiff	)	
v.	)	Case No.: 3:98-0865
MIDDLE TENNESSEE	)	JUDGE HAYNES
STATE UNIVERSITY, et al.	)	
Defendants.	)	

PLAINTIFF'S MOTION TO AMEND AND/OR ALTER FINAL JUDGMENT, AND FOR MORE CLARITY IN FINAL JUDGMENT
(Filed June 25, 2001)

Comes now the plaintiff before this Honorable Court with her Motion and would respectfully request of this Honorable Court that the Court would alter and/or amend it final judgment, and provide more clarity of the final judgment, as follows:

1. The Court stated in its Order "Plaintiff's claims in both actions arise out of the defendants alleged failures to make reasonable accommodations for her to complete a master degree program, including on the taking of the comprehensive examination." In response to this statement by the Court, the plaintiff would show:

A.) The plaintiff stated in her Complaint on pages 5, 6, and 11, that the actions of plaintiff's Complaint were actions arising from acts and omissions of acts that occurred within the one-year statutory time limit prior to the filing of the plaintiff's initial Complaint, *Parr I* (3:98-0865), as indicated on page 11 of plaintiff's Amended Complaint, entitled "Part B. Discriminatory Acts That Occurred Within The One-Year Statute", and acts occurring within the one

year statute of the plaintiff's second Complaint, *Parr II* (300-0398), that plaintiff has filed with the Court. All other acts, and omissions of acts, including the plaintiff's request for an accommodation and subsequent denial of such request in October 1994 (which occurred some four years prior to the plaintiff's initial filing with the Court), were listed and described only as predicate acts – as required by federal evidentiary law – to show a long-term pattern of discrimination, abuse, and retaliation by the defendants, and those acts occurring outside of the one-year statute were not the actions of which plaintiff's Complaint arose. Only those actions listed in Part B. Discriminatory Acts That Occurred Within The One-Year Statute (*Parr I*), and those listed in plaintiff's second Complaint (*Parr II*), both consolidated into Plaintiff's Amended Complaint, are the causes of action of the Plaintiff's Complaint.

B.) The Court states in its Order "Plaintiff also alleges retaliation for her requests for accommodations under the ADA". Plaintiff did not state in her Complaint that she was retaliated against for requesting accommodations. Plaintiff stated that she was retaliated against for the numerous complaints she has filed and the actions she has taken, over a period of some 6 years, in her attempts to protect and defend herself from the defendants, both within the university and in federal court, for the abuse and discrimination that the defendants have inflicted upon the plaintiff for numerous and various reasons listed separately and specifically in the plaintiff's Complaint.

C.) The plaintiff at no time in any Complaint with the Court stated that an accommodation was requested at the comprehensive examination. Plaintiff made no request for an accommodation at the comprehensive examination.

The plaintiff would respectfully request the Court to reflect

these facts, listed above in Part 1, A., B, and C., in its final judgment

2. It is unclear to the plaintiff who the Court is referring to as "Davis" in its second paragraph on page 2 of its Order of June 15, 2001, and would ask the Court to identify this person to the plaintiff, and to what meaning they are incorporated into the Court's final judgment.

Respectfully requested,

/s/ Lori Ann Parr
Lori Ann Parr
825 South Church St.
Box 2262
Murfreesboro, TN 37130
615-333-7567

CERTIFICIATE OF SERVICE

I swear and affirm that a copy of this plaintiff's Motion For Leave To Amend Plaintiff's Motion To Alter and/or Amend was mailed certified, certification number _____[1] to Ms. Mary Collier, 425 Fifth Avenue North, Nashville, Tennessee 37243 on this the 22n[rd] day of July, 2001.

This document was entered on the docket in compliance with Rule 58 and/or Rule 79(a)

FRCP on 6-17-02 By gi

[1] Proof of service was filed with the District Court